United States Court of Appeals

for the Second Circuit

APPENDIX

74-1292

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Number 74-1292

UNITED STATES OF AMERICA,

Appellee,

-v.-

CONSTANCE ROGERS,

Defendant-Appellant.

APPENDIX TO

BRIEF FOR THE DEFENDANT-APPELLANT

BOBICK, DEUTSCH & SCHLESSER
Attorneys for Defendant-Appellant
149 West 72nd Street
New York, New York 10023

Bob A. Kramer
Of Counsel

UNITED STATES COURT OF APPEALS
FILED
MAY 13 1974
A. DANIEL FUSARO, JR.
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA

-against-

CONSTANCE ROGERS

73 CR 906

INDICTMENT
18 U.S.C. §1001

- -X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 21st day of March, 1973, in the Eastern District of New York CONSTANCE ROGERS, knowingly and wilfully made false, fictitious and fraudulent statements and representations and made and used false writings and documents knowing the same to contain false, fictitious and fraudulent statements as to material facts, in a matter within the jurisdiction of the Internal Revenue Service, an agency of the United States in that the said CONSTANCE ROGERS at Branch 29 of the O.T.B. Corporation, 95-28 Queens Blvd., Queens, New York stated and represented and used false writings and documents in cashing winning Superfecta tickets in that she claimed she was an individual named Annette Lehman, whereas in truth and in fact, as she then knew, her name was not Annette Lehman.

(Title 18, United States Code, Section 1001.)

COUNT TWO

On or about the 2nd day of April, 1973, in the Eastern District of New York, CONSTANCE ROGERS, knowingly and wilfully made false fictitious and fraudulent statements and representations and made and used false writings and documents knowing the same to contain false, fictitious and fraudulent statements, as to material facts, in a matter within the jurisdiction of the Internal Revenue Service, an agency of the United States in that the said CONSTANCE ROGERS at Branch 22 of the O.T.B. Corporation, 1501 Broadway, New York City stated and represented and made and used false writings and documents in cashing winning Superfecta tickets that she was an individual named Mary Grannum, whereas in truth and in fact, as she then knew, her name was not Mary Grannum.

(Title 18, United States Code, Section 1001.)

COUNT THREE

On or about the 4th day of April, 1973, in the Eastern District of New York CONSTANCE ROGERS, knowingly and wilfully made false, fictitious and fraudulent statements and representations and made and used false writings and documents knowing the same to contain false, fictitious and fraudulent statements, as to material facts, in a matter within the

jurisdiction of the Internal Revenue Service, an agency of the United States in that the said CONSTANCE ROGERS at Branch 22 of the O.T.B. Corporation, 1501 Broadway, New York City, stated and represented and used false writings and documents in cashing winning Superfecta tickets by claiming that she was an individual named Mary Grannum, whereas in truth and in fact, as she then knew, her name was not Mary Grannum.

(Title 18, United States Code, Section 1001.)

A TRUE BILL

_____
FOREMAN

_____
UNITED STATES ATTORNEY
ROBERT A. MORSE

100

CRIMINAL DOCKET

73CR 906 JUDD, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: Negroni
vs.	
CONSTANCE ROGERS	
	For Defendant:

Did give false statements to I.R.S.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine,	5,000	00	10-9-73	Notice of Appeal	5	-		
Clerk,			2-21-74	Ret. to Trial			5	
Marshal,								
Attorney,								
Commissioner's Court,								
Witnesses,								

DATE	PROCEEDINGS
10-9-73	Before Travia J - Indictment filed
10-18-73	Magistrate's file 73 M 1331 inserted into CR fiel.
10-18-73	Before Judd, J- Case called - adjd to Oct. 25, 1973 at 2:00 PM for pleading
10/25/73	Before JUDD,J.- Case called- Deft and counsel present- Deft arraigned and enters a plea of not guilty- Bail contd at $5,000 Surety Bond- Case adjd to 1/28/74 for trial
10/30/73	Notice of readiness for trial filed
12-4-73	Notice of Motion filed, ret. Dec. 21, 1973, for Inspection, Bill of Particulars, etc.
12/21/73	Before JUDD,J.- Case called- Attys for both sides present- Deft's Motion agreed upon by consent of both sides-Case adjd to 1/28/74 for trial (see Order off Conv of Calendar).

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73 CR 906

DATE	PROCEEDINGS
12/21/73	By JUDD,J.- Order dated 12/21/73 filed that motions to inspect photgraph, etc. were disposed of between counsel during the morning and trial date confirmed-No action necessary. (see Order on Copy of Calendar)
1-28-74	Before JUDD, J - case called - deft & counsel Edward Bobick present- Defts motion to amend caption of indictment - motion denied - Trial ordered and Begun - Jurors selected and sworn -- Govt opens - deft opens - Wade Hearing Begun - Hearing concluded - defts motion to suppress denied - trial contd to Jan. 29, 1974.
1-29-74	Before JUDD, J - case called - deft & counsel Edward Bobick present - trial resumed - Govt rests - defts motion to dismiss - motion denied - Trial continued to Jan. 30, 1974.
1-30-74	Before JUDD, J - case called - deft & counsel Edward Bobick present - Trial resumed - deft rests - Govt opens on rebuttal - Govt rests - Govt sums up - deft sump up -Judge charges Jury - Marshals sworn - alternates discharged - Jury to deliberate at 9:30 am on Jan. 31,1974 Defts motion for Mistrial - Mxx Decision Reserved - trial continued to Jan. 31,1974 at 9:30 am.
1-31-74	Before JUDD,J.- Case called- Deft and counsel present- Trial resumed- Jury resumes deliberations- Deft withdraws motion for mistrial on counts 2 and Deft's motion for directed verdict of acquittal on counts 2 and 3 - Deft motion for mistrial on count 1- Motions argued- Decision reserved on motion for directed verdict of acquittal- Motion for mistrial oncount 1 is denied Jury resumes deliberation- Jury returns and renders a verdict of guilty on counts 1 and 2 and 3- Jury polled- Jury discharged- Trial concluded- Deft renews all motions previously made- Decision reserved- Case adjd to 2-22- for sentencing- Deft contd on $5,000 P.R. Bond- pending sentence
1-31-74	Stenographers transcript filed dated Jan. 28, 1974/
1-31-74	Govt's Memorandum of law filed
2-4-74	Govts Request to Charge filed.
2-7-74	4 stenographers transcripts filed (pgs 2 to 510)
2-20-74	Notice of Motion filed, ret. 2-22-74, for dismissal, to set aside Jury verdict or for a new trial, etc.
2-22-74	Before JUDD, J - case called - deft Rogers & counsel E.Bobock present. Motion denied (pursuant to Rule 33 and 34 etc)
2-22-74	Before JUDD,J.- Case called- Deft and counsel present- Deft sentenced

(OVER)

73 CR 906
CRIMINAL DOCKET

DATE	PROCEEDINGS
	to imprisonment for a period of 1 year and 1 day on count 1- Deft
	fined $5,000 on count 1- On counts 2 and 3 to run concurrent and
	run concurrent with count 1 deft is sentence to imprisonment for
	period of 2 years- Deft to surrender at 4:00 P.M. on 2-25-74 unle
	of $20,000 Surety Bond is made- Govt's motion to increase bail gr
	Bail set at $20,000 surety Bond- Deft advised of her right to app
2-22-74	Judgment and Commitment filed- certified copies to Marshal
2-22-74	Stenographers Transcript dated 2-22-74 filed
2-25-74	Notice of Appeal filed.
2-25-74	Docket entries and duplicate of Notice mailed to C of A

D. C. 109

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- :

CONSTANCE ROGERS, : 73-CR-906

Defendant. :

----------X

United States Courthouse
Brooklyn, New York

January 28, 1974
1:10 o'clock P.M.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

WINFRED D. LEWIS
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, ESQ.,
United States Attorney
for the Eastern District of New York

BY: H. MEYERSON, ESQ.,
Assistant U.S. Attorney

EDWARD BOBICK, ESQ.,
Attorney for the defendant Rogers.

* * *

THE COURT: All right, Mr. Meyerson, I guess we can go ahead with the Wade hearing. Where is your first witness?

MR. MEYERSON: Okay. You Honor, there is an FBI agent on this case. Is it all right if he sits with me?

THE COURT: Yes.

MR. BOBICK: Is he going to be a witness?

MR. MEYERSON: He might be just as to the line-up, your Honor, how it was conducted.

MR. BOBICK: Well, if your Honor, if he is going to be a witness I would ask that he be excluded from the Courtroom.

THE COURT: No, the case agent can always stay.

MR. BOBICK: He's not -- is he the case agent? I didn't think Mr. Meyerson said that.

MR. MEYERSON: Well, he's the case agent on this particular case, assigned to this --

THE COURT: Yes.

(Continued on the next page.)

ROSALIN FRIEDMAN, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Your name again?

A Rosalin Friedman.

Q That's Mrs.?

A Yes.

Q And where are you employed?

A New York City Off-Track Betting.

Q And what branch are you employed at?

A Sunnyside.

Q What branch were you employed at back on March 21st, 1973?

A Rego Park.

Q And do you know the number?

A 29.

Q And what position did you have on that day?

A Supervisor.

MR. MEYERSON: Could I have this marked as Government's Exhibit number 1?

THE CLERK: One-page document marked Government's Exhibit 1 for identification.

(So marked.)

Q I show you what has been marked as Government's Exhibit 1 for identification, and could you identify and describe that document for us?

A It's a 1099 form.

Q Could you just -- could you tell us who it's made out to and first can you tell us is that your signature as the OTB represent?

A Right.

Q And could you read to us who the --

A Annette Lehman.

Q And that address is 9513?

A 13 Horace Harding Expressway, Flushing, New York.

Q And could you read the social security number?

A 534-204-4836.

Q And the date that was cashed was March 21st, 1973?

A Yes.

Q And the ticket number is 579113508071, is that correct?

A Yes.

Q And the amount cashed is $1,421.70.

A Yes.

Q Okay. Now, in the normal -- well, that's just -- who filled out that 1099, that document?

A All the information about the address?

Q Yes.

A Me.

Q You did?

A Yes.

Q And where did you get that information?

A Annette Lehman.

Q I see. Do you see the woman who -- who described herself as Annette Lehman in the Courtroom today?

A Yes.

Q Could you point her out, please?

A Right there.

Q Indicating the defendant?

A Pardon me?

THE COURT: The woman -- there is only one woman in the Courtroom so I guess there is no question whom she means.

MR. MEYERSON: Aside from your law clerk, your Honor.

THE COURT: Behind, yes. Excuse me, Sandra.

Q Now, do you remember what this -- what the defendant gave you as identification?

A A social security card and driver's license.

Q Now, do you remember the name on the driver's license, and social security?

A Annette Lehman.

Q Was it Constance Annette Lehman or just Annette Lehman?

A Annette Lehman.

Q And the address and the social security number is what you wrote down?

A Yes.

Q Okay. Now, did there come a time when you were asked to go to a line-up?

A Yes.

Q And can you tell us approximately where and when this was?

A Where?

Q Was it approximately August 30th?

A Yes, it was in the summer.

Q And was this at FBI headquarters?

A FBI.

Q And could you describe the circumstances of that line-up? In other words, was it -- did you -- did you see it from another room or the same room and how many women did you see?

A I was in a little room that had a two -- a few little glass windows, and there were about seven women lined

up and I had to pick a number, which was the person who signed her name on this.

Q And did you pick out -- whom did you pick out at that time? Who did you pick out as the woman who was an Annette Lehman?

A Somebody -- they told me another name Constance Rogers.

Q And is that the defendant whom you picked out?

A Yes.

MR. MEYERSON: Could I have this marked as Government Exhibit number two?

THE CLERK: Marked Government's Exhibit 2 for identification.

(Photograph so marked.)

Q Is this -- does this picture represent the line-up which you saw?

A Yes.

Q And you picked out number 6?

A Yes.

Q And will you -- that's a black and white picture so it's very hard to tell certain things, so I will ask you did all the women seem approximately the same hair coloring and complexion and within the same approximate ten-year age range?

A The age range, yes.

Q And how about the others, did they seem --

A Yes.

Q -- approximately similar to each other?

Now, when you went to the line-up was anything suggested to you by the FBI?

MR. BOBICK: Objection to the form of the question.

THE COURT: No, just what did the FBI tell her when they took her there.

THE WITNESS: Not much. I gave them all the information. They asked questions and they asked whatever I knew about this girl coming to Off-Track Betting.

THE COURT: Well, with respect to the line-up what did they tell you?

THE WITNESS: That there is a -- going to be a line-up and that -- if I can point out the girl who signed the signature that I should point her out if I can.

Q Okay. And when you saw the line-up how long, whether in seconds or minutes, did it take you to identify the woman at the line-up?

A About a minute.

Q About a minute? And was anything said to you by the FBI at all before you picked her out or did you say, "That's her" before anything was said to you?

A No. They just told me to stand back, that's all.

Q Andyou're absolutely sure that the woman who identified herself to you was Annette Lehman on April 2nd and cashed that signature as the woman sitting here in this Courtroom, the defendant?

A On the 21st, yes.

Q By the way, after you filled it out did you have her sign it?

A Yes.

Q Is that her signature?

MR. MEYERSON: I have no further questions.

THE COURT: All right, you may cross-examine, Mr. Bobick.

CROSS EXAMINATION

BY MR. BOBICK:

Q Did you have somebody working in the OTB by the name of Phil?

A Yes.

Q What was his full name?

Q Phil Nelson.

Q Phil Nelson. Is he still working with OTB?

A Yes.

Q Now, where was your position -- we're only on identification, your Honor.

THE COURT: Yes.

Q Only on identification. When did the FBI tell you that her real name was Constance Rogers?

A When I -- the same day that I pointed her out as Annette Lehman.

Q Before?

A After.

Q After?

A After I had pointed her out I went up to the room before I was going to leave.

Q Now, when you came down to the room did you talk to any FB I agents before you went into the little room?

A Just asking them how long is it going to take.

Q Did they tell you what you're going to see when you got into the room?

A No.

Q So that you didn't know you were going to go look at seven women?

A No.

Q You didn't know you were going to see any women at all?

A Oh, no, they said there is going to be women in the line-up, if I can point out the name of the girl --

Q What?

A If I can point out the name of the girl who signed this 1099 form.

Q Well, did she sign this in your presence?

A Yes..

Q Right in front of you?

A Yes.

Q Did you give her the pen?

A That's the regulations.

Q You mean that the reason that you know you saw her sign it is because it's the rules and regulations?

A Yes.

Q Right? Now, where was your office in this OTB place?

A Rego Park.

Q Yes. Where? Did you stay in front?

A Through a window.

Q And did she go -- did she do this transaction through a window?

A Yes.

Q And you gave her cash?

A Yes.

Q No check?

A I don't know if it was cash or check.

Q You mean you don't remember whether it was cash or check, this 14 --

A Had to have been check because they would have had the check here also.

Q Oh, you mean they didn't show you the check yet, did they, and that's why you know it was cash because if they had a check here you would have seen it here?

A Most likely. Not the check. A copy.

Q They would have shown you a check for $1400, right? And because they didn't show you the check then you are sure that it must have been cash? Is that the only way you know that it was cash?

A Also because she used to bet back what she -- what she got, what she won.

Q Oh, that means you have seen her many times?

A Yes, I have seen her a few times.

Q And she won on many times? Did she ever at any time show you Annette Lehman before?

A No.

Q But you said that she used to bet back all

the time?

A Because I was the supervisor there.

Q Yes.

A ANd I -- I wasn't the only person who handled these kinds of things. My manager would have handled it on another day.

Q But you saw her on many occasions?

A A few times.

Q And did you ever deal with her before?

A I only had to deal with her this one time.

Q This is the only time in the whole business that you ever dealt with her?

A I punched out a few tickets also.

Q Did you ever pay off on the tickets?

A No.

Q Well, how do you know she bet back?

A Because I was in the office watching --

Q And you saw her bet back?

A The customers were complaining that we had to closee off windows because she bet so much.

Q So therefore you were familiar with her?

A Right.

Q And you saw her on many occasions?

A A few times.

Q And you saw her win big money, didn't you?

A Yes.

Q You saw her win big bets, didn't you? And did you remember her signing the papers on other times?

A No, because I wasn't in charge the other times.

Q Well, weren't you curious about this broad who was winning all this money?

MR. BOBICK: I'm sorry, your Honor.

Q Weren't you curious about this woman who was winning all this money?

A No.

Q You weren't curious at all? So you saw her many times, you saw her on many occasions bet back the money that she won and you knew on many occasions that she won big money.

A Yes.

MR. BOBICK: I have no further questions.

THE COURT: All right, you may step down.

Q By the way, you didn't fill in the license plate number of her driver's license, did you?

THE COURT: Let her look at it.

Q You didn't fill out any identification numbers on the driver's license, did you?

A This is one of my first that I filled out.

Q You didn't fill it out?

A No.

Q Isn't it a fact that you were told that Constance Rogers is number 6 and she's the one that signed Annette Lehman and that's the reason why you picked her out?

A No.

Q Did you talk to anybody --

MR. BOBICK: Would you mind sitting down?

THE COURT: Well, you stopped once. Go ahead, you can continue.

Q Did you have any conversations with any FBI agent before you came into Court today?

A Yes.

(Continued on the next page.)

Q Who did you talk to?

A Hal Meyerson.

Q He's not an FBI agent. Did you talk to any FBI agents?

A No.

Q Only Mr. Meyerson?

A Yes.

Q And did he show you any checks at all?

A No.

Q Were you present while he was talking to other witnesses?

A No.

Q Where did you talk to Mr. Meyerson?

A In his office.

Q All by your --

A Wednesday.

Q Wednesday.

And did he show you any checks?

A No.

Q You said before that you know you paid cash because of the fact if there were checks he would have shown them to you, isn't that what you told us?

A Yes, it would have been attached to this form.

Q It would have been attached to the form.

Is the check always attached to the form?

A Not to this form. The first copy is.

Q You didn't see the first copy, did you?

A No.

Q So how do you know whether or not there is a check or not?

A $1400 we'll have in our -- in our vault.

Q Well, how do you know that you didn't pay this by check?

A Because it's a small amount and usually they bet back whatever they -- whatever they won.

Q Who usually bet back, Constance Rogers?

A Yes.

THE COURT: This is not a pre-trial examination, Mr. Bobick.

MR. BOBICK: Yes, your Honor.

THE COURT: I think you have established that she had ample ground for her identification.

MR. BOBICK: Yes, your Honor.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. MEYERSON:

Q All this information was filled out by you, is that correct?

A Yes.

MR. MEYERSON: And I have no further questions.

THE COURT: All right, you can step down.

(Witness excused.)

MR. BOBICK: Your Honor, while we're waiting, may I ask the clerk for subpoenas so I can have witnesses brought in?

THE COURT: Yes, surely.

Did you inquire at the Clerk's office this morning?

MR. BOBICK: I did not.

(Continued on the next page.)

M I C H A E L S U L L I V A N, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

THE COURT: All right, sit down, Mr. Sullivan. Get some subpoena forms.

MR. MEYERSON: May we have these marked as Government Exhibits, first this one and then this one.

THE CLERK: Two forms marked Government's Exhibits 3 and 4 for identification.

(So marked.)

THE COURT: All right, go ahead.

Q Mr. Sullivan, what is your occupation now?

A I am a cashier with Offtrack Betting Corporation.

Q And what branch do you work at?

A Brach 22, 43rd Street and Broadway.

Q And is that the branch you worked at on April 2nd, 19 --

A That's correct.

Q And what position are you there?

A I am a cashier, cash and selling Off-Track Betting tickets.

Q Now, I would like to show you Government Exhibit number 3 and number 4. Can you describe those documents for us?

A To the best of --

Q And identify them.

A They are what they call 1099 forms. They are used by Off-Track Betting for the purpose of claiming winners over $600 on a $2 bet or $900 on a $3 bet.

Q And can you tell us who the woman is who is the payee on both of those days?

A That's --

Q It's written in there.

A Right. The woman who is sitting her now.

Q Yes. Well, could you read it to us?

A Oh, it says Mary D. Grannum.

Q And that's 129 West First Street.

A Rosedale, New Jersey.

Q Roselle?

A Roselle, New Jersey.

Q Now, do you see that woman here today?

A Yes, I do.

Q Could you point her out to us?

A Right --

MR. MEYERSON: May the record indicate that

it's the defendant who he pointed out?

THE COURT: Yes.

Q Now, do you remember her being in your OTB office on April 2nd and April 4th?

A Yes, I do.

Q And who filled out those 1099 forms?

A I -- I see the name on the bottom Sam Rosen. By the handwriting I recognize that as Sam Rosen's.

Q And do you remember Sam Rosen's doing it?

A To the best of my knowledge I do.

Q And you were the OTB cashier at that time?

A Right.

Q Now, could you chronologically tell us on those days what happened from the time the defendant entered until the time that she left?

A Well, the normal procedure is that --

MR. BOBICK: Objection to the normal procedure.

THE COURT: Overruled.

Q Go ahead.

A The procedure is that a -- a winner or a person who is to collect money from Off-Track Betting Corporation, at which time I was the cashier on the window, we have different windows selling and the cashier -- this particular day I was the cashier -- this woman by the name

of Mary Grannum approached my window, handed me a number of tickets that are Off-Track Betting tickets. I proceeded to put them in through the computer. I came up with the figure of 37 some thousand, something like that.

Q That was on the second?

A On the second.

Q And the first time it was $18000, is that right?

MR. BOBICK: Your Honor, if Mr. Meyerson is going to testify I suggest he take the stand. If we're going to hear what the witness has got to say, I think we ought to let the witness testify.

THE COURT: Yes, but I think he ought to be sure.

MR. BOBICK: If he's in error I think we ought to hear that too, without being corrected by Mr. Meyerson.

THE COURT: This isn't a Jury matter now. Let's proceed.

It's just a question of identification.

Q On April 2nd can you tell us approximately how much?

A Approximately 18,000.

Q And on April 4th, how much?

A 37,000.

Q Now, how long did this -- did this woman stand in front of your window?

A From 45 minutes to an hour.

Q And was she -- how far away was she from you?

A At one point she was about two, three feet away when she was right in front of the window. And then I just sort of asked her to step aside while she was waiting for the manager -- we called him the manager, at the time he was the shift manager to finish the doucments of the 1099 and the process of the checks, or however he was going to take care of it.

Q And that shift manager was Mr. Rosen?

A Right.

Q And she -- did she hand you the tickets and the identification?

A I first processed the tickets through the computer, at which time when it's over the -- when it's a point of a 1099 form involved it is our job as a cashier to ask for legitimate identification. Which in nine out of ten cases we ask for social security card, driver's license, credit card, something to this effect, it has to be something valid with address so we start off with a license and then we go to a social security card.

Q Do you remember what it was in this instance?

A To the best of my knowledge I believe it was a social security card. I am almost positive, and the

driver's license.

Q Now, was -- was there anything -- I'm sorry, how many -- do you remember how many people were on line when the defendant came in?

A Two or three anyway. There is usually a constant cashing line.

Q Did she go to the back of the line or did she walk up front?

A No, she walked right up front.

Q And do you remember her manner or anything that would help you remember that it was she rather than someone else?

A Well, to the point that she was just rude, you know, there was no -- she had said that Sam knows, it's all right, that he said to take me first. I think somewhat in those effect of words, not exact words, but it was something to that effect.

Q I see.

A And then the name I remember -- well, my wife's name is Mary, the first name so I remembered the name Mary and I thought it was Gram or Grannum, I wasn't exactly sure how they say it on paper but --

Q But your wife's first name is Mary?

A My wife's name is Mary and I just happened to

remember the name Mary.

Q What's the usual amount of money that you cash?

A On average maybe $75.

Q So would you say that this was a very unusual --

A Very.

Q And is that the reason why you kept looking at her?

A Well, it was something that was even talked about later among some fellow agents, you know, it was something that I can turn around and brag about to a point because, you know, no one ever had done such a volume, also I was involved, to give an example to the Court if I may, I was involved in a type of bet with this horse Secretariat, a man came in and bet $40,000 at quarter after seven in the monting. I mean I would never forget the incident in my life.

The man handed the $40,000 in one hundred dollar bills to me through the window.

THE COURT: Just answer questions.

Q In this case the fact that a woman --

A It was similar, right. It stayed -- it stayed in my mind.

Q All right, were you ever asked to identify this -- to go to a line-up?

A Yes, I was.

Q And this was at FBI headquarters?

A That's correct.

Q And showing you Government's Exhibit 2, is this what the line-up looked like?

A That's correct.

Q And which number did you pick out from that line-up at first? Do you remember?

A Originally I -- I believe I picked number three.

Q And you changed your mind later on?

A That's correct.

Q And which number did you pick out later on?

A Number 6.

Q And that's the defendant?

A That's correct.

Q Now, could you tell us in your own words why you changed your mind?

A Well, I was brought to my senses, I would say, to a point -- the FBI spoke to me afterwards, you know, and they said well -- I had mentioned to an FBI agent that I would not finger anyone in any Courtroom, I just didn't want to get involved.

Q That's before the line-up?

A That's correct. I am a family man. I have

other things to worry about. I didn't want to get involved in any type of incriminating anyone and then they brought to my mind, they gave me such examples if you saw someone rape your wife, wouldn't you identify the person, and so my duties as a United States citizen was to bring justice, otherwise what's the sense of the FBI or police department or any valid organization that's trying to fight crime, whatever. So they brought me to my senses to the point where I said well, if I could submit the truth now I would like to go ahead and tell nothing but the whole truth.

Q Okay, did you recognize in your own mind that woman immediately or was there a doubt?

A There was no doubt whatsoever, it was just that in my conscience I said to myself, I am not going to get involved, so I am going to pick the wrong person.

Q Were any threats made to you by the FBI?

A No, there was not.

Q Now, you were also -- before the line-up you were also exhibited a group of photographs, is that correct?

A That's correct.

Q And do you remember approximately how many photographs you saw at that time?

A I think it was Agent Gianturco, he brought to my Off-Track Betting office approximately ten, 12 women

photographs and it took me no more than a matter or two minutes to pick out the individual.

Q The defendant?

A Right.

Q And you're absolutely sure that this is the woman who identified herself as Mary Grannum on April second and April fourth, is that correct?

A That's correct, to the best of my knowledge.

MR. MEYERSON: I have no further questions.

(Continued on the next page.)

CROSS EXAMINATION

BY MR. BOBICK:

Q Mr. Sullivan, did you say that you were shown photographs before you went to the FBI headquarters?

A That's correct.

Q Were any of the people in that line-up in the photographs that you saw other than the defendant?

A I couldn't say.

Q So that actually you were shown pictures, photographs and when you went to the line-up you saw a person whose photograph you were shown, only one?

MR. MEYERSON: Excuse me, I didn't get that question, your Honor.

THE COURT: It wasn't a question. It was a statement which I don't think was supported by the evidence.

MR. BOBICK: Well, I'm sorry, your Honor, if the Court feels that way.

Q Isn't it a fact that you were shown photographs before you went to the FBI line-up?

A That's correct.

Q And isn't it a fact that the only photograph that you saw -- which there was only one photograph that you saw before you went to FBI headquarters where the party appeared in the line-up?

A I don't understand the question.

Q All right, was there anybody in the line-up whose photograph you were shown before you went to FBI headquarters other than the defendant?

A To the best of my knowledge I would say no.

Q So that the only one who was shown to you in the line-up and whose photograph was shown to you before you went to the line-up was this defendant?

A That's correct.

MR. BOBICK: Your Honor, may we have the other witnesses called back to find out if she was shown photographs? I didn't know anything about it and I would like to find out now.

MR. MEYERSON: She was not.

MR. BOBICK: She was not? I will take his representation.

THE COURT: All right.

BY MR. BOBICK:

Q Now, Mr. Sullivan, what day was April 2nd, 1973?

A I really don't recollect.

Q What day was April 4th, 1973?

A I think they were like a Monday and a Wednesday.

Q Did you see this defendant at any time before April 2nd?

A No, I did not.

Q Did you see her on April 3rd?

A No, I did not.

Q Did you see her on April 5th?

A No, I did not.

Q Did you ever see this defendant at any time other than April 2nd and April 4th?

A I saw her in the line-up --

Q No, beforehand, sir.

A No.

Q What?

A No.

Q So that the first time you saw this woman, the very first time you saw this woman was the time she came up and said, "Sam knows me?"

A She didn't say that, she said that Sam knows that I am going to cash tickets now.

Q That's what she said?

A Something similar to that. She -- she just let me know that the management was aware that she was going to give me tickets to cash.

Q Where was Sam?

A In the back room.

Q Did you go back and tell Sam, "Hey, there is a woman out here with $18,000 --"

A Well, after I proceeded to put the ticket in the machine Sam approached my window to get the identification.

Q But you had never seen this woman before?

A No, I didn't.

Q Never saw her before and you had never saw her in the OTB office before?

A No, not to my knowledge.

Q And did she give you any identification?

A She handed me identification.

Q Did you write it down?

A No, I didn't write it down.

Q Did you look at it?

A Yes, I did.

Q And did you make any notations of it anywhere?

A Not wrote down, no. Mentally, that's all.

Q Mentally. Well, how long have you been a cashier for OTB?

A Twenty months.

Q And how many winning tickets where 1099's have been required having through you?

A I don't know the exact number. At least --

Q Now, sir --

A No, I wouldn't say thousands. Couple of hundred.

Q Couple of hundred. Big amounts?

A No, most of them -- that's why it would stand out in my head, most of them are like one thousand, two thousand, right.

Q Small amounts? On April the second do you have a tape or a record of payments made by you on April second?

A Yes, I believe OTB does.

Q OTB has? And where are those tapes -- where's the office of OTB kept where these tapes can be obtained?

A This would be 1501 Broadway.

Q 1501 Broadway.

And now, sir, on April second were there any other large withdrawals or pay-outs by you on Superfectas that day?

A I don't know exactly which day but I know there was other big pay-outs during that week.

Q Well, what were the names of the big people that paid out during that week?

A Well, I paid a person by the name of Grasciano a large sum of money also.

Q What's his first name?

A No, it's a woman.

Q What's her first name?

A I really don't recollect.

Q Not Mary?

A I'm not positive.

Q You're not positive? Couldn't be Mary, could it, isn't that your wife's name?

A Yes, it is.

Q How could you ever forget that? Now, besides that --

THE COURT: Is there any indication that he forgot his wife's name?

MR. BOBICK: No, but there might be that he forgot Mary Grannum's name.

THE COURT: Proceed with questions. There is no time for argument.

Q How much did you pay out on April second, did you make any other large payment out on April second?

A I don't remember the exact figures.

Q Well, did you make any other large payments out on April 4th?

A I may have. I really can't recollect.

Q And to whom did you make those payments?

A Oh, one particular payment I made to this

woman here.

Q Other than that? Is that the only one you made?

A It's the only one I remember vividly.

Q Is that the only large payment you made?

A I can't positively say yes.

Q Well, can you positively say no?

A No, I can't.

Q When you say the FBI brought you to your senses, did they tell you that there is a law against committing perjury?

A No, they did not.

Q They didn't mention perjury at all?

A (Witness shakes head.)

Q Didn't mention perjury to you, making false statements under oath? Didn't say anything?

THE COURT: You have to speak and not just nod.

THE WITNESS: No, sir.

MR. BOBICK: I have no further questions.

THE COURT: Anything more?

All right, you can step down.

MR. BOBICK: One more question.

BY MR. BOBICK:

Q Is your signature or writing anywhere on those

papers which you look at there?

A No, they are not.

Q What?

A No, they are not.

Q Not your signature?

A No.

Q But you could identify the writing as one belonging to one Sam Rosen?

A Right.

THE COURT: All right, you can step down.

(Witness excused.)

MR. MEYERSON: I'm sorry, could I ask one --

THE COURT: All right, just a moment, Mr. Sullivan.

MR. MEYERSON: I'm sorry, your Honor.

REDIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Sullivan, I would like to ask you a very important question and please think about it.

MR. BOBICK: Objection to the form.

THE COURT: Ask your question. Don't characterize it.

Q Disregarding any line-up that you may have seen, or any photographs that you may have seen, could you

today state that it is the defendant, without reliance on any other pre-trial confrontation but just on your own memory of the events of that day?

A Yes, I could.

MR. MEYERSON: I have no further questions. Thank you, Mr. Sullivan.

THE COURT: All right, you're excused.

(Witness excused.)

THE COURT: Mr. Meyerson, what was the status with respect to counsel at these line-ups?

MR. MEYERSON: I would have -- yes, Mr. Bobick was there himself. There were about nine or ten women there. Mr. Bobick was allowed to choose which one would be in the line-up. Mr. Bobick was allowed to choose which position Miss Rogers would be in if any. He could have said, "I will leave her out of this paticular line-up."

And he made no objection to any procedures at the line-up at all. He was requested to be --

THE COURT: All right, now are you going to have the FBI agent testify?

MR. MEYERSON: Yes, sir, I will.

THE COURT: Bring the third witness.

MR. MEYERSON: Has your Honor made a ruling

as to this witness?

THE COURT: Well, I am going to wait until I hear the FBI agent.

S A M R O S E N, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

THE COURT: You may be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Rosen, I show you Government's Exhibit number 3 and 4. Could you identify and describe those for us?

A Yes, these are what we call 1099 forms, which we fill out for any winnings over 300 to one.

Q And is that your signature at the bottom?

A Yes.

Q And -- okay, they are already described -- what is -- what was your position on April second and April fourth?

A I was shift manager at 1501 Broadway branch number 22.

Q Do you -- can you identify the woman who identified herself to you as Mary Grannum on those days?

MR. BOBICK: Objection, your Honor, leading and suggestive and everything else.

THE COURT: All right, overruled.

THE WITNESS: Can I --

Q Can you identify that woman here today? Is she in the Courtroom today?

A Yes,

Q Could you point her out? Let the record indicate it was the defendant. Are you sure?

A Positive.

Q Now, can you describe these days to the best of your ability please, as to when you were called out to fill in that information?

MR. BOBICK: Your Honor, I object to it. He's leading him.

THE COURT: All right, overruled. Before the jury put it a little differently.

THE WITNESS: My cashier called me that he had a number of tickets, big pay-outs to cash, and he called me, gave me the identification that is required of every large pay-out or anyone whom we have to make out a 1099 form for. And I take the tickets and I fill out the 1099 forms, and whatever is required to be made out before I get the cash

for the party involved, and give it to them.

Q Now, do you remember what identification was furnished to you on those days?

A The social security card and the driver's license for New Jersey.

Q And did you put down that information on these forms?

A Yes.

Q And is that social security number on the form the same as the social security number which she gave you?

A Right.

Q Did you check that?

A Yes.

Q And the address?

A And the address.

Q And did you give her the 1099's to sign?

A Yes, we pass that through the window for the person to sign before we pay them out.

Q And do you remember her signing it?

A Yes.

Q How long -- approximately how long was it that she was -- that -- that you had these dealings with her?

A How long?

Q Approximately for how long a period of time was she there in your office?

A I think about twenty minutes. It takes -- each transaction of this magnitude would take at least twenty minutes, until I fill out the forms and fill in all the information and make out the checks. It takes about twenty minutes for each transaction.

Q So that would be --

A I see two transactions on two separate days. I think it's a total of --

Q About forty minutes?

A About forty minutes.

Q Now, did you -- were you asked to appear -- to come a line-up at the FBI?

A Yes.

Q Now did you -- were you asked to appear -- to come to a line-up at the FBI?

A Yes.

Q And do you remember that line-up?

A Yes.

Q And did you first pick out the defendant at that line-up?

A No, I --

Q Could you tell us why?

A Because I didn't want to become involved.

I want to -- I figure that if I picked out maybe the wrong defendant that would be the end of it for me.

Q Did you have a conversation with Mike Sullivan as to that prior to the line-up?

A I really can't recall a conversation with Mike Sullivan, but we might have discussed the fact that we didn't want to become involved.

Q Now, why did you change your mind?

MR. BOBICK: Objection.

THE COURT: Overruled.

THE WITNESS: Well, it was -- finally I figure as long as -- the FBI knew that I had picked out the wrong girl, because she happened to be an agent of the FBI, the girl that I picked out. And the one -- and when they confronted me with that testimony I figure I might as well be a good citizen and identify the correct person.

Q Now, did you have a talk with the FBI? Did the FBI talk to you about that? I'm sorry, withdrawn.

Did you pick out any photos before the line-up?

A No.

Q Did you ever see the woman either before April second --

A No.

Q Did you see her after April second, before the line-up, in your OTB branch after these two dates?

A After these two dates I have never saw her again outside of the time at the FBI office, the line-up.

Q And was there any doubt in your mind when you observed the line-up, even though you didn't pick out the right one --

A No.

Q -- was there any doubt in your mind who it was?

A No.

Q I show you Government's Exhibit number two. Is this the line-up that you saw?

A Yes.

Q And you picked -- and when you finally decided to tell the truth --

THE COURT: Well, no, all right, go ahead.

Q I'm sorry, when you -- when you told the FBI that you would like to tell the truth --

A I picked number six.

Q I see. Was it suggested to you which person it was?

A Not at all.

MR. MEYERSON: I have no further questions.

THE COURT: All right, Mr. Bobick.

CROSS EXAMINATION

BY MR. BOBICK:

Q Mr. Rosen, did you ever tell this defendant that your name was Sam?

A Well, everybody generally knows my name is Sam.

Q Well, you never saw her before, did you?

A My name is called constantly.--

Q Sir?

A -- through the back.

THE COURT: No, the question is did you ever tell her you were Sam?

THE WITNESS: No.

Q Did you know she was coming there with big tickets?

A No.

Q Did you ever expect this woman to come there with big tickets?

A No.

Q You never saw this woman before?

A Never saw her before.

Q Never had any dealings with her?

A Right.

Q Didn't know her, is that right?

A Correct.

Q All right, now did Mr. Sullivan tell you that "Somebody's out there asking for you, with big tickets?"

A I really can't remember. It's possible.

Q Well, do you remember or is it just possible?

A I can't remember if he said somebody is asking for me personally.

Q Right. Now, do you remember whether or not -- remember, not what was suggested to you, do you remember whether Mr. Sullivan gave you the driver's license or the defendant gave you the driver's license?

A I think Mr. Sullivan --

Q No, not what you think.

THE COURT: Just recollection.

THE WITNESS: I -- to the best of my recollection I think Mr. Sullivan handed me the driver's license and the tickets.

Q Did you discuss this case with Mr. Sullivan?

A I never discussed the case with him.

Q Did you discuss what happened on April second?

A No.

Q Well, you discussed with him that you weren't going to identify anybody, didn't you?

A Well, that was the idea, yes.

Q Well, didn't you discuss with him subsequent to this time that "We'd better tell the truth, the FBI got to us?"

A No, I just mentioned it to him that time that I wasn't going to tell -- to pick her out of the line-up. End of conversation.

Q Did the FBI show you any pictures before you went down there?

A Never.

Q The only one that was shown pictures was Mr. Sullivan?

A I have no idea what Mr. Sullivan was shown.

Q Now, did you and Mr. Sullivan come down together?

A No.

Q Where did you come from?

A I really can't remember.

Q Well, where were you that day?

A I can't remember exactly where I came from. I remember that I came to the FBI headquarters.

Q Do you remember where you came from?

A From home, no doubt. Probably. Maybe not.

Q Couldn't have come from work?

A I don't believe I was working. If I recall,

it was about noontime.

Q What office do you work at now?

A 40th Street.

Q What's the address?

A 80 West 40th.

Q Is that the same address where this place occurred?

A No.

Q Where did this place occur? (sic)

A This place was 1501 Broadway.

Q Do you still work with Mr. Sullivan?

A No.

Q Are you still a supervisor or shift manager?

A No.

Q What do you do now?

A I am a manager.

Q You're a manager. And did you write down the identification on that piece of paper?

A Yes.

Q Was there anybody else with you or with this defe..dant at the time you say you saw --

A There might have been.

Q Did you see anybody else?

A I can't remember at that exact moment. At this

precise time, but are you asking me if I wrote this? I wrote this.

Q Yes, but the question is do you remember the facts behind that, not what the paper says but do you remember the facts behind it?

A I remember that time -- that the tickets came in through the window.--

Q Right.

A -- for a large pay-out. The cashier called me.

Q Right.

A I came, I got the necessary information that I have to have to fill out these necessary papers or checks --

Q How did it -- how did the cashier call you?

A Sam?

Q That's what he did?

A Just with a loud voice.

Q He yelled out Sam?

A That's how a lot of people know my name is Sam.

Q And that's how you came over to that window?

A Right.

Q Was that pay-out by check or cash?

A I imagine it was by check because --

THE COURT: Your best recollection.

THE WITNESS: To the best of my recollection

I think it was checks.

Q Do you know where those checks are?

A I have no idea where those checks are.

Q Did you see --

MR. BOBICK: Do you have those checks? You're standing, I assume that you're going to give me something.

MR. MEYERSON: I'm not giving -- I didn't introduce anything.

THE COURT: The checks don't have anything to do with it.

(Continued on the next page.)

Q Weren't the checks written by you?

A They could have been and they could have been written by somebody else.

Q Who else would write check?

A Another shift manager or a manager.

Q Well, who was there at that time?

A I can't recall at this precise time or moment.

Q You mean you can't remember who the manager was at that time?

A I can't -- he might have been there and he may not have been there.

Q Well --

A I know I was there.

THE COURT: The question is identification.

Q The question is did you have to bring those papers over to a manager?

A No, I have the authority to fill them out. I have the authority to write checks.

Q Did you?

A I -- I will say yes.

Q Without remembering whether there were even checks written?

A Is it a yes or no question you're looking for?

Q Yes.

A An answer?

Q Yes, it's a yes or no question.

Do you remember writing the checks?

A I remember writing the check for 18,000.

Q All right, now, did you write a check for 37,000?

A I might have.

Q Do you remember writing a check for 37,000?

A I cannot remember. I might have.

Q So that --

A I probably did.

Q Do you remember?

THE COURT: Oh, you have asked that two or three times.

THE WITNESS: I probably did.

THE COURT: Let's move on to identification.

Q Were there any other large pay-outs on that day?

A Possibly.

Q Do you remember?

A I Can't remember.

MR. ROBICK: I have no further questions.

THE COURT: All right, you can step down.

MR. MEYERSON: I have a question.

THE COURT: All right, if you want to do it now, why should you use this for pre-trial?

MR. MEYERSON: Okay.

THE COURT: Keep them.

All right, step down.

(Witness excused.)

THE COURT: All right, the agent?

MR. MEYERSON: Yes.

N I C H O L A S G I A N T U R C O, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Gianturco, you are a member of the FBI?

A Yes, sir.

Q And how long have you been such?

A Approximately five years.

Q Were you in charge of the line-up of the defendant?

A I was.

Q And could you please tell us all the preparation that you went through to make sure it was a fair line-up?

A Yes, we had approximately eight or nine girls from our office, the same height, the same color hair, and we tried to get it within the same age group. We had the -- we allowed the defendant's lawyer to look at the girls, and he had two that he didn't want in there, or one, and the -- the attorney also I think switched a few people around after every individual looked at the -- the line-up. Every witness.

Q And where did the witnesses look at the line-up?

A There is a small window in the back of the -- the room that we use and it's a one-way, they can see out into the room.

Q ANd were the agents instructed not to talk to the witnesses until identification was made?

A Right, we had one agent with each one of the witnesses. They brought them into the back room so they could look out and -- at the line-up and then they immediately brought them downstairs, and then they took their statement as to who they identified.

Q Now, did Mr. Bobick object to anything that occurred that day or to any procedure at all?

A No, sir.

MR. MEYERSON: No further questions.

CROSS EXAMINATION

BY MR. BOBICK:

Q Agent Gianturco, were you the one who brought Mr. Sullivan down?

A No.

Q Did you -- did you bring Mr. Rosen down?

A No.

Q Did you bring Mrs. Friedman down?

A No.

Q You didn't bring any witnesses down?

A No, sir.

Q Did you talk to them after they were done?

A After they were done?

Q Yes.

A I was not the agent that interviewed each -- each one of them.

Q Were you present at the time they were interviewed?

A Mr. Rosen later on I was, yes.

Q Was that before or after he changed his identification?

A It was after, when he came back down the office the second time.

Q He had gone up twice?

A He had been to the office for the identification, had gone to -- had gone home and at that time the agents had talked to Mr. Sullivan and found out that Mr. Sullivan had intentionally picked out the wrong person, and we called Mr. Rosen to come back in.

Q Well, were you present when the agents talked to Mr. Sullivan and found out he intentionally picked out the wrong person?

A No, sir.

(Continued on the next page.)

Q You just told us what somebody else told you?

A Yes, sir.

Q You weren't present at that time?

A No, sir.

Q But were you present when Mr. Rosen came back?

A Yes, sir.

Q Now, did you hear the conversations that were held at that time?

A Yes, sir.

Q Tell us what was said and who was present.

A Yes, sir. Basically myself and an Agent Fanning were there. Mr. Rosen came back in. We at that time had -- Agent Fanning had -- I believe had been there during the Sullivan -- when Mr. Sullivan was being interviewed, and we told Sam Rosen the fact that he intentionally picked out the wrong person --

Q That Sullivan did or that Rosen did?

A We told Mr. Rosen that he, meaning Rosen --

Q Sullivan? He, Rosen? Yes?

A Had picked out the wrong individual, as Mr. Sullivan had also, and of the conversation that Sullivan had had with Rosen early that morning, that Rosen had hinted that he, Rosen, was going to pick out the wrong individual, because he didn't want to get involved in the case.

Q Who said that to Mr. --

A Excuse me?

Q Who said that to Mr. Rosen?

A I -- I believe probably myself and Mr. Fanning was --

Q Well, did you tell Mr. Rosen that it was a serious crime to make false statements?

A Yes, sir.

Q And did you advise him that if he made them under oath he'd be guilty of perjury?

A I might have, but I'm not sure.

Q And did you advise him that the penalty -- what the penalties for perjury were?

A Again, I might have, but I'm not sure.

Q I see. So that when you had this conversation to Mr. Rosen -- with Mr. Rosen, at that time you mentioned to Mr. Rosen Constance Rogers?

A Excuse me, I don't understand your question.

Q Did you mention her name?

A In the ensuing conversation?

Q Yes.

A Oh, sure, I -- I'm sure it came up.

Q And did you mention that she was number what is it, six?

A No, I didn't.

Q Did you show him the picture?

A I showed him the photo and asked him to pick her out.

Q Was the photo developed already?

A The photo had been developed, yes.

Q So at which point, when you brought Mr. Rosen back and you decided that, when you brought Mr. Rosen back and you decided that he was willing to look at the photo, and see if you could suggest that he tell the truth, is that right?

A Mr. Rosen came back in.

Q Well, he didn't come back in voluntarily, did he?

A I -- I called him up and asked him to come in.

Q You called him up and said "Please come over here"?

A Right.

Q When he came in did you show him the picture?

A We talked to him first.

Q You talked to him first. Did you tell him that the woman he picked out was an FBI agent -- employee?

A Right.

Q And you told him that you knew that she couldn't be the one?

A Among other things we told him.

Q And you told him that you knew she couldn't be the one because she was an FBI employee?

A Among other things that we said.

Q And you said to him that "Being she couldn't be the one, and we had this conversation with Mr. Sullivan, do you think that you ought to change your mind before you find yourself guilty of perjury?"

A No, sir.

Q What did you say?

A I told him that I knew by the conversation he had with Mr. Sullivan that he intentionally went up -- went to the FBI office to pick out the wrong one.

Q And did you tell him that was against the law?

A No, I don't believe I did, because unless -- unless he was testifying in court I don't believe that it would have been.

Q Did you ever mention anything to him about grand jury?

A Possibly.

Q You know, "We'll bring you before a grand jury, you'll have to give us testimony under oath"?

A Possibly.

Q "And that if you continue to make false

statements under oath you are guilty of perjury"?

A Possibly.

Q And at that point did you --

MR. BOBICK: Are these your witnesses?

MR. MEYERSON: Your Honor, the defense is asking a lot of "possible" questions. I'll ask him to confine himself to reasonable possibilities, because anything is a possibility.

THE COURT: Well, it has to do with pressure. I'll let him go ahead.

Q And at that time did you tell him that Constance Rogers was No. 6?

A No, sir.

Q Did you ever point the photograph out to him again?

A I showed it to him. He picked out Constance Rogers, and that was it.

Q And that was all that was said?

A At that time, yes.

MR. BOBICK: I have no further questions.

THE COURT: Was there another lineup?

THE WITNESS: No, sir, he -- the second time he identified her from the photographs.

THE COURT: Anything else?

MR. BOBICK: May we have just one second?

Q One question: The first time did Rosen and Sullivan both point out the same person, or was it different people?

A I wasn't with them. I was in the front of the lineup, and --

Q But you must have gotten the reports? Did they point out the same person or different people?

A I -- I don't know. I'd have to -- I'd have to check the paper on it.

Q Is there a notation somewhere that would tell us whether they identified the --

A Should be on the 302 that was recorded of the interview, or on the back of one of the other photos.

MR. BOBICK: Your Honor, just to save time, may we get from Mr. Meyerson --

THE COURT: See if you can find it, Mr. Meyerson.

THE WITNESS: It might be there on the back of the photo, the fact that Mr. Rosen picked out a certain number.

MR. MEYERSON: There is nothing as to Mr. Sullivan's later identification, so I would have no knowledge as to what he picked out at first. I

think Mr. Rosen --

THE WITNESS: Just off the top of my head, I think they picked out different individuals. I think.

MR. MEYERSON: Mr. Rosen picked out female number three.

THE COURT: I think that's the same one that Mr. Sullivan picked out.

MR. BOBICK: Mr. Sullivan also mentioned number three, I believe, your Honor.

MR. MEYERSON: "Mr. Rosen said that he stated that he" -- Yes, it was No. 3.

THE COURT: All right, anything further?

MR. BOBICK: Nothing further.

THE COURT: All right, you are excused.

(Witness excused.)

THE COURT: All right. Now, the first thing I'd like to know, Mr. Bobick, is what importance this all has if you are going to plead entrapment?

MR. BOBICK: Your Honor, I would hate to -- I have two problems, your Honor: I would like -- I wouldn't mind discussing them with the Court in chambers, but I certainly would not like to discuss it in open court here.

THE COURT: All right. Well, tell me what you think with respect to the identification, other than the fact that you have a jury problem that you can bring out on cross-examination.

MR. BOBICK: None, your Honor, I don't think there is any problem that we wouldn't be able to bring it out on cross.

THE COURT: I don't think it's been shown that this was unconstitutionally suggested.

MR. BOBICK: Well, your Honor, I would suggest that the showing of the photographs to Mr. Sullivan before he came, together with the fact that there was only one photograph of a person who was the only person in that lineup, which was similar to the lineup, would constitute a pre-determination or an influence upon Mr. Sullivan to make a certain pick, which I certainly think would be suggestion.

Secondly, your Honor, as far as Mr. Sullivan is concerned, it's a question for the jury whether they believe him or not. But the inference could arise out of the fact that the photographs were shown to him first, then he picked out the wrong person, and then they had a talk with him and he saw the error of his ways, and then he chose to pick her -- I think it certainly would lead them to feel

that any testimony Mr. Sullivan gives may be a little tainted.

THE COURT: Well, you may argue that there is reasonable doubt. I'm not going to say that it was impermissibly suggested. I'll let them testify.

All right, let's proceed.

MR. BOBICK: Your Honor, I have this matter of the subpoenas, and I don't know whether or not Mr. Meyerson will be able to solve it for me. One will be for the payouts that were paid out for April 2nd and 4th at 1501 Broadway. If he hesitates or if he has the ledgers here, I wouldn't have to serve that on OBT.

THE COURT: You ought to get them if you don't have them. You'll get them faster than the subpoena will.

MR. MEYERSON: Your Honor, OBT furnished me with checks made out to Cash on April 2nd and April 4th. They don't -- they don't say -- there is a rule that you can't give a check for more than $10,000, and so there are many checks that total more than the $18,000 and more than the $37,000. There'd be no way of identifying which ones --

MR. BOBICK: Your Honor --

MR. MEYERSON: (Continuing) -- went to her, if at all. They are made out to Cash, with no signatures.

I'll probably be introducing them on direct --

THE COURT: Is there a way of getting the print-out of the payouts?

MR. MEYERSON: No, I don't believe there is a way of getting printouts of payouts. There are prints of the purchasing --

THE COURT: Well, find out.

MR. MEYERSON: I'll make a call. I don't believe there are.

MR. BOBICK: The second one is for Mr. Philip Nelson, whom I think we need as a witness. That's the man identified by Miss Friedman.

THE COURT: You try to subpoena him, but Mr. Meyerson, you try to produce him tomorrow.

MR. MEYERSON: I will call up and ask him, but OBT is, you know, not within our control. If the guy is on vacation -- I will make a call and ask if he can be produced.

THE COURT: Yes.

MR. BOBICK: Your Honor, Mr. Rosen testified that he wrote out a check for $18,000.

THE COURT: Yes. Well, Mr. Meyerson has the

checks.

MR. BOBICK: What?

THE COURT: Mr. Meyerson has these and other checks.

MR. BOBICK: And Mr. Meyerson says there is nothing over $10,000.

THE COURT: No, I thought he said that anything over $10,000 had to be by check.

MR. BOBICK: Well, Mr. Meyerson said nothing could be over $10,000.

MR. MEYERSON: No, the OBT is not allowed to write out a check for more than $10,000. Therefore it would simply be two checks, and this was Mr. Rosen's -- you know, when I spoke to him that's what he told me. I don't remember exactly what he said, but I believe what he said was he wrote out the checks. Now, whether it was one check or two checks, I'm sure we can get him in here and clear it up.

THE COURT: You will have a chance on cross-examination.

Let's go ahead with the beginning of our testimony now.

MR. MEYERSON: Your Honor, there is also identification by other witnesses of similar acts.

Do you want to do this now?

THE COURT: No, not now.

MR. MEYERSON: Shall we bring in the jury?

MR. BOBICK: Your Honor, could we have a two-minute personal recess for defendant?

THE COURT: All right, we'll take a short recess. Five minutes tops.

(Recess had.)

* * * *

I N D E X

Witnesses	Direct	Cross	Redirect
ROSLIN FRIEDMAN	4	10	18
MICHAEL SULLIVAN	20	30	37
SAM ROSEN	39	45	
NICHOLAS GIANTURCO	53	55	

E X H I B I T S

Government's Exhibits		For Ident.
1	one-page document	4
2	photograph	8
3	forms	20
4	forms	20

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

CONSTANCE ROGERS, : 73-CR-906

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

January 28, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

WINFRED D. LEWIS
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, ESQ.,
United States Attorney
for the Eastern District of New York

BY: HAL MEYERSON, ESQ.,
Assistant United States Attorney

EDWARD BOBICK, ESQ.,
Attorney for the defendant

(10:00 a.m.) 3

THE CLERK: Criminal cause for trial, United States against Constance Rogers.

THE COURT: Let's see where the people are.

MR. MEYERSON: Good morning.

THE COURT: Good morning, Mr. Meyerson, and Mr. Bobick.

MR. BOBICK: Yes, your Honor.

THE COURT: Are we ready to proceed to trial?

MR. MEYERSON: Yes, we are, your Honor.

THE COURT: One thing: This case is based mainly on identification, which I would guess would require Wade hearings.

MR. MEYERSON: I've informed Mr. Bobick as Brady material that there were three people at lineups. One lineup was held. There were three witnesses who came in separately to view it. Two of them at first identified someone else, and for that reason I would think that you might want to hold a pretrial Wade hearing to make sure that the testimony is good before allowing it in evidence.

THE COURT: Yes, I think we should. All right, are you ready to proceed with that?

MR. MEYERSON: Yes.

THE COURT: And I wanted to ask, also -- we

might do it now -- what questions, special questions, should be put on voir dire, other than the usual ones about prior jury experience and employment and particularly --

MR. BOBICK: Relationship to Federal authorities, your Honor, Federal law enforcement officers.

THE COURT: What?

MR. BOBICK: Relationships to Federal law enforcement officers.

THE COURT: Yes.

MR. BOBICK: Your Honor, I think in this case we ought to find out whether or not they bet on the OTB.

THE COURT: Yes, I think that's proper.

MR. BOBICK: Or whether they bet on and won -- whether they played in the Superfecta, whether they ever used -- if it's a woman, whether she ever used her maiden name, and whether or not she ever -- they ever had any problems with the Internal Revenue Service.

THE COURT: I think those are proper. I think under employment I might also ask whether they have ever been employed by anyone dealing with income tax returns or with racing.

MR. BOBICK: Fine.

THE COURT: Mr. Meyerson, anything else?

MR. MEYERSON: I don't think so, your Honor.

THE COURT: All right. Since it will be a short case --

MR. MEYERSON: You might ask them if they have any familiarity with drivers themselves, whether they know drivers in harness racing.

THE COURT: All right. Since it's a short case, I think requests to charge ought to be in my hands this afternoon, really.

MR. MEYERSON: I have the requests to charge now, your Honor.

THE COURT: All right, Mr. Bobick, I don't know that we have had that many cases under this particular law but you can pick paragraphs out of Mathis and Blackmar, I think is the book, and use those without having -- I'll consider them without your having to type them out.

MR. BOBICK: Fine.

MR. MEYERSON: May I ask that we pick the jury and open first before we do, and see how long that takes, because the witnesses that I have -- besides three of them, there is another woman with-- who might identify the defendant on a different day, and that, I would contend, would be a similar

act --

MR. BOBICK: Well, your Honor, I wouldn't. I would contend at that point that would be another charge for which the defendant is not indicted, and I believe, your Honor, that to bring in a witness or bring in a series of witnesses as to other charges of which there is no charge against this defendant at this time would be prejudicial and unfair.

THE COURT: It may be prejudicial but it's not unfair.

MR. BOBICK: Well, your Honor --

THE COURT: It's within the rule in the Deaton case, which was reaffirmed just a year ago by the Court of Appeals.

MR. BOBICK: Except, your Honor, that we are dealing in this case with 1001, which specifically says that there is a specific writing for the purpose of committing a fraud on the Federal Authorities, roughly, and the point is, your Honor, that she is charged on a specific date with violating a specific statute, not with a course of conduct; not with a course of conduct but with a specific statute violation, and the violation is limited, I believe, your Honor, -- should be limited -- to the three counts in the indictment.

THE COURT: Yes, but the evidence that Mr. Meyerson has described would not be prejudicial unless it bore on the intent with which he was acting. Isn't that so?

MR. BOBICK: Well, your Honor, that would be a question for the jury to determine.

THE COURT: Yes.

MR. BOBICK: It would be a question for the jury to determine, and based on the indictments that she has at this present time. I feel that if they -- there are going to be other acts, let the government get other indictments. And I claim surprise, I claim that we are not ready to defend. We are ready to defend against the three indictments--three counts in the indictment that we have. We are not prepared to go into and defend cases which we know nothing about at this time.

THE COURT: You don't have to defend them, but they are relevant evidence.

MR. BOBICK: Well, your Honor, if they are relevant evidence then it's necessary for us to defend them. And the point is that, from what I have heard as to one of the witnesses here, which deals with stolen or lost identification, with another charge and another date, there is more involved

than just 1001, and I feel, your Honor, to move us to trial where you are going to use other crimes, other charges, other dates, is taking advantage of this defendant.

MR. MEYERSON: Your Honor, I think I should make it clear that I don't believe it necessarily is a Federal crime. I believe it was under a $900 day, which means that a 1099 form was not required. Since a 1099 was not required and filled out, therefore there was no 1001 violation. I don't believe necessarily there were even any others. However, it was a similar --

MR. BOBICK: Well, you --

MR. MEYERSON: Please let me finish.

MR. BOBICK: Finish.

MR. MEYERSON: However, it was a similar act in the sense that the evidence would show that the defendant did present herself as a different person, using a different identity, and that is exactly the substance of what she was doing here.

MR. BOBICK: But your Honor, that is not Deaton, and there is absolutely no question about it in this situation, your Honor, she is charged with violating three specific Federal -- three counts of the indictment, specific violations of the

statute. To bring in the fact that she may have done something improper is not part of the same indictment and I believe is prejudicial to the extent that it would be damaging to the defendant.

THE COURT: Well, I'll rule on it when the evidence is presented, but as of now, I see no reason not to receive it, and you will be entitled to an exception when --

MR. BOBICK: Well, your Honor, we haven't any information about it at all. We haven't got the dates, we haven't got the times, we can't even establish an alibi to say it never happened.

Now, I think if you are going to allow it, then I should be entitled to know what it is, and if I'm allowed to know what it is, Ishould be able to prepare for it, and I can't prepare for it while I"m standing in front of your Honor, ready to try the case.

Now, I don't think it's proper and I take most strong exception to it. But, your Honor, the situation is that it's not even a Federal crime, according to what he says, which is certainly what Deaton was. And this is not the same thing.

THE COURT: That makes it all the more admissible, I would suppose.

MR. BOBICK: No, your Honor, I would say it would be inadmissible.

MR. MEYERSON: I have a memorandum of law which I will submit.

THE COURT: All right; give Mr. Bobick, now, if you can, the dates that were involved.

MR. MEYERSON: April 5th.

MR. BOBICK: And where? The place?

MR. MEYERSON: It was the OT branch -- I'll tell you in one minute which one it was.

THE COURT: Where?

MR. MEYERSON: I'll have the information as to the OTB branch in one minute.

MR. BOBICK: And what the man was, and who the people were who said she used it.

MR. MEYERSON: You don't need the witnesses.

MR. BOBICK: I don't need the witnesses, but I need everything else.

MR. MEYERSON: And she used the name, Constance Baker.

THE COURT: Do you have your memorandum now?

MR. MEYERSON: Yes.

THE COURT: Let me have it.

MR. BOBICK: Your Honor, at this time, before Mr. Meyerson leaves, if what he says is true--

and then I know what the story is, to that extent - I made a request before of Mr. Pullman, a witness which the government has available, and Mr. Meyerson assured me that he would be available, and at this time, if this is the case, I ask you to produce the checks that were given to Constance Baker on the production of Seymour Rothstein as a witness for the defense.

MR. MEYERSON: Mr. Rothstein is here.

MR. BOBICK: Okay; And then I need the checks--

MR. MEYERSON: And then the checks.

MR. BOBICK: -- that were issued to Constance Baker.

MR. MEYERSON: The checks are all issued to cash, so we don't know who they were issued to.

MR. BOBICK: The checks -- your Honor, I say this: That Constance Baker's payments by OTB were by check, and I say that those checks are evidence of who cashed those checks.

MR. MEYERSON: They were made out to cash.

THE COURT: Have you the checks?

MR. MEYERSON: I have checks on April 2nd and April 4th. I don't know whether there were any checks --

MR. BOBICK: You said April 5th.

MR. MEYERSON: I don't know whether there were any checks or whether it was cash that was given.

MR. BOBICK: I want the checks for April 5th. I'm telling you, there were checks for April 5th.

MR. MEYERSON: How do you know?

MR. BOBICK: Because you told me the dates.

Listen, I haven't been sleeping on this case, either; just like you have been digging up better things, I haven't been sleeping, either.

Would you look and see if there are checks, and if there are checks, would you make them available, and the person who signed them?

MR. MEYERSON: Yes.

THE COURT: All right, bring in your memorandum and after I take a quick look at it, we'll bring in the jury. I think we should pick the jury first.

MR. BOBICK: Before? That's all right.

Your Honor, those were two motions. One motion is for a wiretap which was government-ordered, on the telephone of Miss Constance Rogers, and we feel that we are entitled to the background material for the issuance of that.

THE COURT: Well, you are. Have you asked for it before?

MR. BOBICK: Yes, we did, and he said he won't

give it to me.

THE COURT: Oh, you mean these are not taps on her?

MR. BOBICK: Yes, they are taps on her.

THE COURT: Well, this in the Vario case, where I'm hearing the motions on Friday.

MR. BOBICK : Friday.

Well, your Honor, at this point I would ask for those taps now, at this point. They were taps on her, and I believe that I am entitled to them, also, in this case.

MR. MEYERSON: Your Honor, the government's request to charge --

MR. BOBICK: DO you have a copy for me?

MR. MEYERSON: Of course. And a memorandum as to similar acts. The courts speak of acts, and they do not speak of crimes.

THE COURT: Yes, I see you have a number of cases subsequent to Deaton, too. Well, I'll hear any -- I"ll consider any other cases you may locate.

MR. BOBICK: Right.

THE COURT: Now what about the wiretaps? Have you given Mr.--

MR. BOBICK: Yes, I served him with a copy of the motion.

MR. MEYERSON: I took it back down to my office, your Honor.

Mr. Pollack will now be on the case with me and we'll be arguing -- since I'll be doing this, he'll probably be arguing the case on Monday, so I haven't looked it over.

THE COURT: On Friday.

MR. MEYERSON: And I'd rather not argue it.

MR. BOBICK: Yes, but you have a wiretap of this young lady.

MR. MEYERSON: Yes. Well --

MR. BOBICK: Well, I want the tap. And I want the transcript and the background material for how you got the tap.

MR. MEYERSON: As to the background material, your Honor, I don't feel the government has to turn it over, since it is not using the tap at all.

THE COURT: Well, it's coming in later on. You said they are not being used here. I don't know how there is going to be anything exculpatory in there.

MR. BOBICK: I haven't seen them.

MR. MEYERSON: Everyone was able to come on Friday, your Honor, to listen to it.

Reports are made by the FBI to me, and my

reports to you, because you were the miscellaneous judge at the time you signed the order, and they got copies of those, which I'll make available to Mr.Bobick, also. And they were able to listen to it on Friday.

Now, I believe I stated to them at that time that if we have them, we will provide them with copies. I mean, it's a carton of about this big, about, and it's a lot of tapes, and if Mr. Bobick wants to sit down and listen to it, then he can arrange a separate date.

MR. BOBICK: But, your Honor, I'm entitled to --

MR. MEYERSON: There are no transcripts made.

MR. BOBICK: I believe Ishould be entitled to have the affidavit on which this was based. I don't think there is any question about it. I'm entitled to the background on the affidavit on which that order is based, and that's what I'm asking for.

MR.MEYERSON: Your Honor, I am not prepared to argue that at this time. I haven't looked into it. My position at this time would be that we have not-- we are not using any evidence of the tapes; we are not using the tapes at all, and if there isn't any such use by the government, they are not entitled to any background.

However, it's only a few days 'til Friday, and I'm sure when we receive Mr. Bobick's memorandum of law and -- on the subject, and we have --

MR. BOBICK: You may not get one. You may not get one.

THE COURT: He doesn't need any memorandum of law to have a look at the order and the application.

MR. BOBICK: That's right; there is no question -- your Honor, I happen to agree with you. I expect to do it many times throughout the trial, but I have to agree with you --

MR. MEYERSON: Your Honor, I'm not prepared to argue this.

MR. BOBICK: No, I may go a step further. I may go a step further, your Honor: the situation is, you are now prepared to try this woman on three counts of violation of 1001.

He's attempting to bring in stories about Baker on April the 5th. Your Honor, I firmly believe that what he got, he got as a result of those taps, and I firmly believe, your Honor, that I should be able to hear those taps to be able to cross-examine witnesses properly as to whether they were induced to testify to what they are testifying now as a result of what he picked up on the taps.

THE COURT: Well, I signed the order on the basis of an application that indicated that there was probable cause for it.

MR. BOBICK: That there was a reason, right. And I think that I should be entitled to see what it is.

MR. MEYERSON: Your Honor, if I may clear up the record for one minute, because whether we turn it over or not, the Court should not be misled.The fact here is that Mr. Bobick knew of this a long, long time ago. He asked me what was on it and I told him that I didn't think there was anything either way, and he took my word for it -- he said he was taking my word for it. He never requested to come down to listen to it or see it, anything that it was based on.

On Friday all the other defendants' lawyers came in, and they said that they wanted to see it. I said, "SUbmit motions and we'll answer it on Friday, and if the Judge orders us to turn it over, we will, of course, turn it over."

Mr. Bobick called me up and said -- everyone, all the other defendants' lawyers called me, and it seems they told me I'm the only one with standing to ask for it, so I have to ask for it. I said,

"Make your motion and we'll argue it on Friday."

Now, which -- there's nothing wrong in all of that,but Mr. Bobick is now coming in here, and just said that he firmly believes --

MR. BOBICK: I didn't say that.

MR. MEYERSON: Well, do you want to read that back?

THE COURT: No, you said the April 5th may have been based on the wiretaps.

MR. BOBICK: May have been based, that's right.

MR. MEYERSON: And he already said -- he did say -- and we can have it read back -- that he firmly believes that it was.

In either case, he took my word for it before: It wasn't. I'll give my word on it that there is absolutely nothing said about any dates, about anything about this case or about this defendant, and nothing is on there that would be of use to the government or the defendants; nothing is exculpatory.

If Mr. Bobick wanted to listen to it, he had a long, long time to come in and listen to it, and he stated to me that he didn't want to be bothered.

And I don't think he can come in here now

on the morning of trial and ask to listen to a carton-load of tapes.

MR. BOBICK: But, your Honor, something has happened today which is not something that was known before. When I spoke to Mr. Meyerson a long time ago, he told me that at the time of the lineup involving this defendant, she was identified. No question about it.

This morning at ten o'clock, while I was seated in the courtroom, Mr. Meyerson came in and said to me for the first time, "I want to tell you, I think I should tell you under Brady that two of the witnesses who identified her at the lineup first identified the wrong person, and then they had a talk with members of the FBI," and at which time he wasn't present.

"When they decided they'd change their testimony because they made up that they weren't going to identify her because they were scared."

Now, your Honor, I feel at this point it becomes interesting to me, and it becomes factual to this defendant to determine what these other witnesses, who are going to testify in this trial -- What caused them to testify. And I think that my suspicions were aroused, and I want to know whether

the FBI had any other talks with these witnesses. And I --

THE COURT: Well, on October 25th you were told there were wiretaps which would not be used.

MR. BOBICK: Yes, your Honor.

THE COURT: And I'm not sure whether you were here, I don't have the Vario papers, but there was a time fixed to listen to the wiretaps.

MR. BOBICK: That was Friday, your Honor.

THE COURT: Yes, but it was fixed sometime back.

MR. BOBICK: Yes, your Honor.

MR. MEYERSON: Mr. Bobick --

THE COURT: And I think we should proceed with this indictment, but I think Mr. Meyerson should bring me the -- no, Mr.Giokas can bring me the files on the wiretap.

MR. BOBICK: Right, so that I can see the affidavit.

THE COURT: And I will determine whether there is anything that under Brady you are entitled to look at.

MR. BOBICK: But I think that I would be able to -- being that the tap was made of this girl's phone, the defendant's phone, that I should

be entitled to look at the affidavit on which the tap was ordered.

I don't think there is any question about that.

THE COURT: Well, the only question is whether you are asking it in her interest in this trial or whether you are asking it in the interest of co-defendants in the trial that's to start in March.

MR. BOBICK: Well, your Honor, regardless of which, you know I"m entitled to it, so whether I look at it now or I look at it next week, you know, it really doesn't serve any point. I should be able to look at it anyway.

THE COURT: Well, we'll take a ten-minute recess. Then we'll get up a jury and pick a jury and then we'll go on to the other matter.

MR. BOBICK: To the Wade?

THE COURT: The Wade hearing after openings to the jury.

(Recess held)

THE COURT: All right, get up a jury panel.

MR. BOBICK: Your Honor --

THE COURT: Just a minute.

Yes, Mr. Bobick?

MR. BOBICK: Your Honor, before we have the

jury here, I move to amend the indictment against Constance Rogers to portray her true and accurate name of Constance Annette Lehman Rogers.

THE COURT: Well, I suppose you can show that that is her full name, but she was indicted --

MR. BOBICK: Your Honor, but I submit --

THE COURT: -- Constance Rogers.

MR. BOBICK: Your Honor, but at this point I submit to the Court a duplicate copy of a marriage certificate between Donald Milton Lehman and Constance Annette Spayd on August the 11th,1958, in Lancaster County, Pennsylvania, which would indicate that after the marriage, her name would be Constance Annette Lehman.

MR. MEYERSON: How did she get the name, Rogers?

MR. BOBICK: She married again, but there is nothing wrong with it.

MR.MEYERSON: Your Honor, I think that could come out as proof that --

MR. BOBICK: But, your Honor, at the time when the jury is being questioned as to the indictment against United States of America against Constance Rogers, Ithink it's only fitting and proper that her entire name be used. That is

Constance Annette Lehman Rogers.

MR. MEYERSON: Once -- since she was married a second time, your Honor, her name is not Lehman any more, nor was it Annette. It was Constance Rogers. And she may have had that name in the past; this does not mean this was her name now. If anything -

THE COURT: No, I'll deny the motion. If you want to question as to whether anybody knows Donald Milton Lehman or you want to go back to her maiden name of Spayd, if that was her maiden name, I'll include that in my questions as to whom they are acquainted with.

(continued on following page)

MR. BOBICK: But, your Honor, you have a situation here where the jury is going to be aware that her name is Constance Rogers based on the indictment, whereas in truth and in fact, her name is Constance Annette Lehman Rogers, and I think, your Honor, that is there, the record of proof is there. I think that the jury has a right to hear that her name at the time or at some time was Constance Annette Lehman, or as it is now, it's Constance Annette Lehman Rogers.

And since the --

THE COURT: Why isn't it Constance Annette Spayd Lehman Rogers?

MR. BOBICK: Because Spayd was the maiden name, your Honor.

THE COURT: What are the names she's alleged to have used, Mr. Meyerson?

MR. BOBICK: Annette Lehman.

MR. MEYERSON: She is alleged to have used Annette Lehman alone, without the Constance and without the Rogers and without the Spayd. And your Honor, I'd request to see whatever record it is that her name is all four because, having done a few divorces, it seems to me when -- as soon as you are divorced, you no longer use that name

at all, and you are not entitled to use that name at all, and then you have another one.

MR. BOBICK: Oh, yes, you are.

MR. MEYERSON: I mean, the woman has a choice of using different ones, but if you are trying to say --

THE COURT: No, I think Mr. Bobick can bring out the facts in his opening, if he wishes, but I'm not going to amend an indictment.

MR. BOBICK: Well, your Honor, the fact is that-- All right, the Court has ruled and I"m bound by it.

MR. MEYERSON: Your Honor, Ishould say that I will object to Mr. Bobick mentioning anything about it unless he has a witness to testify that --

THE COURT: No, he can mention it. If he doesn't produce a witness, you can cover that in your summation.

MR. MEYERSON: Yes, because that is a copy, and unless -- I don't know where he got that or how it was produced.

THE COURT: Well, I'm not going to.

The Clerk will please draw the names of 12 jurors.

(continued on following page)

FL:GA
T1R3AM

(A jury of twelve and two Alternates was duly empanelled and Sworn.)

(The jury is in the jury box.)

THE COURT: Before we hear counsel, I'd just say a few words about the process of a jury trial, because there are a number of you who haven't served on a jury before, and perhaps this will make more concrete some of the facts that you have read in the jurors' handbook which I am sure was given to you when you came in.

The first stage of a criminal case is the Opening by counsel. The Government will state what he expects to prove in some general way. Then the defense attorney had a right to say what he expects to prove, but he doesn't have to take any position now or at any time, because it's the Government's duty to prove guilt beyond a reasonable doubt.

Whatever counsel says is argument or outline, and not proof. The proof comes from witnesses and Exhibits that you will hear and see later. You are to decide the facts only on the testimony and the Exhibits that are produced in Court, and you will have a difficult and important task in determining the credibility of witnesses who testify and determining what you believe and what you don't believe.

A defendant is presumed innocent unless and until

he is proved guilty beyond a reasonable doubt. The defendant has no duty to testify, and a jury can't draw any inference against her if she doesn't testify.

While the evidence is being offered, there may be objections to questions or Exhibits by counsel, and I'll rule on these on the basis of the law of evidence. If I exclude anything, you are not to draw an inference from that fact, or to try to guess what it would have been. And my rulings don't indicate any idea as to the guilt or innocence of the defendant. They are not bearing on the merits of the case, just on the special rules of evidence that apply in a jury case.

There will be recesses at various stages of the case, sometimes to hear objections, sometimes to consider other matters that have to take place out of the presence of the jury. During these recesses, you are not to talk about the case among yourselves, or with anyone else; not among yourselves, because somebody might express an opinion that there will be some hesitance to change later on, and not with anybody else, because we don't want any input except from the questions and answers and testimony that comes here.

And please stay away from any of these parties or witnesses that you may meet in the elevators or in the corridors, because we don't want any question about

your having been influenced by something other than evidence brought before you in the courtroom.

When the case is over, counsel sum up, and then the defense counsel sums up and the Government's attorney afterwards. Then I instruct you on the law that you should apply in reaching a verdict from the evidence that has been submitted. Meanwhile, keep your minds open until all the evidence on both sides is in, counsel have presented it, and I have instructed you. And listen just as carefully as you would if somebody close to you were involved in the case.

Normally a court day runs from 10:00 in the morning to 4:30 in the afternoon, with an hour or so at lunch. Normally at 1:00 -- Today we are going to take lunch a little earlier, and start a little later because of some things that have to be considered before I bring you back, and we will stop a little early today, also.

The practice in the Federal Courts is for Juror No. 1 to serve as Foreman. That means that Mr. Palmieri will present any questions that you may have, and he'll preside over your deliberations at the end of the case, but it doesn't mean that his vote counts any more than anyone else's. You are all of equal status in a jury.

We are ready now to hear Mr. Meyerson's Opening

as to what the Government plans to prove.

MR. MEYERSON: Your Honor, Mr. Bobick, Miss Rogers, Mr. Foreman, Ladies and Gentlemen of the Jury, the defendant is charged here with filling out false 1099's. A 1099 is an information form which must be filled out if you win a certain amount of money, which will be explained to you later. If you win this -- this amount of money -- I believe it's over $600, based on a certain $2 bet -- you will hear about that later -- then you must fill in form 1099, and when you fill out the 1099, it is then submitted to the Internal Revenue. And that's, of course, so that they know who received the money, and who would have to pay it on their taxes.

There are three Counts in this Indictment, and it's the defendant who is charged in all three instances with giving different names. Not Connie Rogers, the defendant's name, and not the address and social security number which is truly hers, but different addresses and different social security numbers.

Now, Count One states that on or about the 21st day of March, in the Eastern District of New York, which is Queens, Brooklyn, Suffolk, Constance Rogers, the defendant, knowingly and willfuly made false, fictitious and fraudulent statements and representations, and made

and used false writings and documents, knowing the same to contain false, fictitious and fraudulent statements as to material facts in a matter within the jurisdiction of the Internal Revenue Service, an agency of the United States, in that the said Constance Rogers, at branch 29 of the OTB Corporatinn located at 95-28 Queens Boulevard, Queens, New York, stated and represented and used false writings and documents in cashing winning superfecta tickets, and that she claimed she was an individual named Annette Lehman, whereas in truth and in fact, as she then knew, her name was not Annette Lehman.

The defendant, Constance Rogers, does have a middle name, Annette, and I believe she was married once to a man by the name of Lehman, and I believe that her maiden name was Spayd. She didn't use Connie Annette Lehman Spayd Rogers, and she didn't use her correct address --

MR. BOBICK: Your Honor, I am going to object. It's a great Summation, but it's a bad Opening.

THE COURT: I think you are right.

Just give the facts.

MR. MEYERSON: She didn't use her address or social security number. She used a different number, and an address of 95-13 Horace Harding Expressway.

MR. BOBICK: Your Honor, again I am forced to rise to an objection. I don't feel this is a proper Opening.

MR. MEYERSON: I believe --

THE COURT: Mr. Meyerson has been only five minutes. He's not going to go into undue detail about facts. He's entitled to outline what he expects to prove.

MR. MEYERSON: And the evidence will show that after the form was filled out by the OBT clerk from information supplied to him by the defendant, he gave the form to Miss Rogers to sign, and she signed it Annette Lehman. That's the first Count.

The second Count is substantially similar, except here it was on the second day of April at a different OBT branch, branch 22, and here she claimed she was Mary Grannum, at a different address, 129 West First Street in Roselle, New Jersey, and gave a different social security number than was given the first time. And here she cashed -- The first time she cashed $1421.70, and the second time she picked up $18,048.60. The same procedure, and she signs Mary Grannum.

The third day, two days later, at the same branch, branch 22, she comes back again as Mary Grannum, and

cashes $37,876.80, gives the same identification and address as she gave two days before, and again signs it Mary Grannum.

This is what the Government expects to prove.

I thank you very much.

THE COURT: Mr. Bobick, do you want to say anything at this time?

MR. BOBICK: Yes, your Honor.

Your Honor, if the Court pleases, Mr. Meyerson, Mr. Palmieri, Ladies and Gentlemen of the Jury, as the Court pointed out to you, the defendant is not under any obligation to make any opening statement, because the defendant doesn't have to prove anything, the burden is strictly on the Government. But I feel that in the face of what Mr. Meyerson said, that I think I have to bring to your attention what we intend to show. There was a ticket cashed under Annette Lehman, as Mr. Meyerson pointed out, and we intend to show that the identification that Mrs. Rogers had was lost, and the only identification she had was her maiden name -- her maiden name, Lehman. And she came in and in order to get that money, she had to present her identification, which she had, which showed her name to be Annette Lehman, or Constance Annette Lehman, and she signed for that one check.

Counts Two and Three are clear and open entrapment. Entrapment, because the person who gave her the tickets and the identification is a Government informant, a Government witness, and that Government witness trapped Mrs. Rogers into taking his tickets, with the identification that he gave her, because allegedly the woman is supposed to be in the hospital, and he was too busy to go, would you do him a favor and get it.

And like a stupid -- she did it. She was trapped by the Government, with a Government agent, with the Government's ticket, with the Government money, and she had to pay the price.

We intend to prove that she is the victim, not that she made a false statement to cheat the Government, but that she is the victim. And I think that the evidence will indicate it.

Thank you very much.

THE COURT: Ladies and Gentlemen, I am going to excuse you now until 1:30, and we have some matters to take up before you come back. But I hope we'll be ready by 1:30.

Meanwhile, remember what I said: Don't talk about the case among yourselves or with anyone else, and don't talk at all with any other people in the court-

room whom you may see as you go about.

You are excused.

I want to talk to counsel a couple of minutes.

(The jury left the courtroom.)

THE COURT: Mr. Bobick, in the light of your Opening, is there any necessity for Wade Hearings?

MR. BOBICK: Yes, your Honor.

THE COURT: Well, you are admitting that she cashed the tickets.

MR. BOBICK: I admit that she -- Yes.

THE COURT: Then what's the problem about an identification?

MR. BOBICK: The reason for the identification, your Honor, is that she is charged originally with cashing money -- right now it's only $1400, but we originally got information there was $3,000 worth of tickets on Annette Lehman, which she never did. There was one ticket that she cashed, Annette Lehman. The other tickets are involved with -- I think it would be necessary -- I don't know, maybe --

MR. MEYERSON: Your Honor, it seems to me if they are admitting the identification, there is no necessity for a Wade hearing.

THE COURT: Well, I will go through with it briefly, but let me say I told you the times when I was on Miscel-

laneous, and apparently the Order that I signed was signed on June 7, 1973, and authorized the interception, among others, of wire communications of Constance Rogers at a telephone number 212-592-8453 at 97-11 Horace Harding Boulevard. Is that one of the addresses that was given?

MR. MEYERSON: No, it wasn't.

THE COURT: It was not.

I think, Mr. Meyerson, that while I'm going to consider whether these matters should be turned over to Mr. Bobick, at this time in view of the fact that they are all subsequent to the offenses charged, I should at least inform him of what was said with respect to Constance Rogers.

MR. MEYERSON: That's fine, your Honor. The Progress Reports, as I said, were made available to defense counsel, who came on Friday. If Mr. Bobick had come, they would have been made available to him, and --

THE COURT: Well, give him a copy.

MR. MEYERSON: I'll have to go back to my office to make other copies, but I'll be glad to. Or he can read.

THE COURT: Were you giving him this whole thing?

MR. BOBICK: I haven't gotten anything yet.

THE COURT: No, I mean, you've given the other

counsel this whole thing?

MR. BOBICK: No.

MR. MEYERSON: The Progress Reports, your Honor.

THE COURT: No, but I think Mr. Bobick should also know that it is asserted that on May 10, 1973, Connie Rogers called Rothstein and told him there would be a meeting between Gerry Rogers, Pullman and Rothstein, and she called him again on May 11, 1973, and said Gerry wanted him to come over to Connie's apartment to discuss a meeting as to what Gerry, Pullman, Rogers and Rothstein would tell the Grand Jury, and when Rothstein entered the apartment, he was talking with Junior, who was said to be Gerry, and stated Rothstein had just arrived, that they were going to get their story straight as to whose ticket would be whose.

MR. MEYERSON: Are you reading from the Affidavit?

THE COURT: Yes. And that on May 17, 1973, Rothstein again went to Connie Rogers' apartment, and she stated she's in touch with Rogers by telephone every day, and in the week of May 14, she told Rothstein that she met with Gerry, and spent several nights with him at the Island Inn Motel in Westbury.

I don't know that Buonacorsa has anything to do with this case. Does he?

MR. MEYERSON: Not with the main case, your Honor.

THE COURT: Well, this was apparently Connie Rogers' telephone.

MR. BOBICK: That's right, your Honor.

THE COURT: 97-11 Horace Harding Boulevard was her address?

MR. BOBICK: And your Honor, since Mr. Rothstein is going to be one of the witnesses, I certainly think that we should be able -- that I would get that anyway, under Jencks. It's Jencks material.

THE COURT: At the conclusion of his direct examination.

MR. MEYERSON: Your Honor, it's not the Government witness. If Mr. Bobick wishes to call him, he's not entitled to any 3500 Material on pre-trial statements.

THE COURT: Well, I would think the simplest thing is for me to let Mr. Bobick now look at these Progress Reports, which other counsel have seen, make notes of them, let the Clerk stay here while he does it, and you provide a copy that he can have after lunch.

And I know that shortens people's time on the lunch hour, because we want to start again at 1:00 o'clock with the Wade witnesses. Maybe you can sit here while Mr. Bobick looks at these things, and then bring them back to chambers.

MR. BOBICK: Your Honor, you are reserving on the Affidavit?

Notes fl

(continued on next page.)

(Luncheon recess taken.)

(Wade Hearing held. Transcript previously delivered.)

THE COURT: Bring in the Jury.

(The Jury entered the Courtroom.)

THE COURT: All right, will you please swear the witness please.

E D W A R D M A L L O N, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Mallon, what is your occupation?

A Special Agent with the Federal Bureau of Investigation.

Q And how long have you been such?

A 22 and a half years.

Q Now, did there come a time when you met the defendant?

A Yes.

Q And at that time did she furnish you with her name, address and social security number?

A Yes, she did.

Q Could you tell me what the name, address and social security is that she gave you?

A May I refresh my recollection on parts of that?

Q Yes.

A She furnished her name as Constance Annette Rogers. She furnished her maiden name, last name, as Spayd. She gave her residence address as apartment 4B, 97-11 Horace Harding Expressway in Queens, New York and her social security number as 161-30-5848.

MR. MEYERSON: I have no further questions.

THE COURT: Any cross examination?

MR. BOBICK: Yes, sir.

THE COURT: Proceed.

XXXXXX CROSS EXAMINATION

BY MR. BOBICK:

Q Did you ask her whether she had been married before?

A I don't recall having asked her.

Q Did you ever hear of the name Lehman --

A No, I have not.

Q -- as being -- well, I didn't finish the question, but you never heard of it before anyway? And she just gave her name as Constance Annette Rodgers.

A Yes. And I asked her maiden name.

Q How did she spell Rodgers?

A R-o-d-g-e-r-s.

Q R-o-d-g --

A I asked her how to spell it and that's how --

Q Is there any question in your mind that there is a D in the name as she gave it to you?

A Well, it's not the ordinary spelling in my estimation.

Q Did you ever tell Mr. Meyerson that she gave her name as Constance Annette Rodgers?

A Would you -- would you give me that question again?

Q Did you ever tell Mr. Meyerson that she gave her name as Constance Annette Rodgers, R-o-d-g-e-r-s?

A Yes, this information was furnished to Mr. Meyerson.

Q Including the spelling?

A Well, it wasn't done by me so I couldn't really say, personally.

Q Do you know who it was done by?

A Not offhand, no.

Q But you are sure it was done?

A Well, I am certain it was -- it was given to him, yes.

Q But you don't know who gave it to him?

A No, sir, I don't.

Q But is there any question in your mind as to the spelling being R-o-d-g-e-r-s?

A There is no question in my mind personally,

no, because that's the way Mrs. Rodgers gave me the spelling.

Q You specifically remember asking her?

A Yes.

Q And you specifically remember her telling you?

A Yes.

Q And you specifically remember writing that spelling out?

A Yes.

MR. BOBICK: I have no further questions.

THE COURT: Anything else?

MR. MEYERSON: No.

THE COURT: All right, you're excused. Thank you, Agent Mallon.

(Witness excused.)

(Continued on the next page.)

ROSALYN FRIEDMAN, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

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DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mrs. Friedman, could you tell us your employment, please?

A I work for New York City Off Track Betting.

Q And what branch did youwork at on March 21st, 1973?

A Branch 29, Rego Park.

Q And what was your position at that branch?

A Supervisor.

Q I am going to show you Government's Exhibit number 1 and I ask you if you can identify and describe that for us.

A It's a 1099 form we use when people win over $600 on a $2 bet2 -- $2 bet.

Q And how much was the payout on that day?

A $1421.70.

Q So would that require a 1099 --

A Yes.

Q -- to be filed? Now, how many copies are there of that form?

A Three.

Q And do you remember where each one goes?

A One to the Internal Revenue and one to the customer. No, the third one, I don't know.

Q Now, would you tell us did you sign that?

A Yes.

Q And did you fill out all theinformation on there?

A Yes.

Q And who signed as the payee?

A Annette Lehman.

Q Do you recognize the woman who signed that as Annette Lehman in this Courtroom?

A Yes.

Q Could you identify her for us?

A Right there, the blond.

MR. MEYERSON: Let the record indicate it's the defendant.

Q Is there any doubt in your mind?

A No.

Q Now, do you remember the identification that the defendant furnished to you at that time?

A I remember the social security card but I don't remember the other identification.

Q There was something else though? And do

you remember the name on that identification, social security card?

A Annette Lehman.

Q Was there any Constance in there?

A No.

Q And was there any Rodgers in there, either with a D or without a D?

A No.

Q Could you read for us the complete name and address?

MR. BOBICK: Objection, your Honor.

Q -- And social security number.

THE COURT: Sustained. You have to offer it first.

Q How did you write down the information on there? Who furnished you the information?

A Annette Lehman, and the ticket that she handed in.

Q Could you describe that day to the best of your recollection from the time the defendant walked in until the time she left?

A She walked into the branch.

THE COURT: Speak up loud enough so everyone can hear, please.

THE WITNESS: She walked into the branch, she waited on a line and she had her winning ticket, and she must have handed it into -- to the selling agent and then the selling agent calls me because it's a large payout and it's a 1099 form that they need, so I have to fill out all the information and I have to handle the money, get the money from the vault for the check.

Q Did you actually see her waiting on line?

A No.

Q When did you first see her?

A When she handed me that identification.

Q And for how long a period of time was she in your presence approximately?

A About a half hour.

Q And during that time how close was she to you?

A There was a window between us.

Q You mean with bars?

A No, just a plain window.

Q Were you able to see clearly?

A Yes.

Q Did you have a full face view or a side face view or did you just see her from the back?

A Full view.

Q Did you also -- I'm sorry, were you ever asked to come to a line-up at FBI heardquarters?

A No, they didn't ask me to come to a line-up, they asked me to come down and then they told me it was a line-up when I got there.

Q When you -- you were present at a line-up?

A Yes.

Q And could you tell us how many women you saw at that time?

A About seven.

Q And did they all have the same approximate hair coloring and complexion, et cetera?

A Yes.

Q And whom did you pick out at that time as the woman -- I'm sorry, what were you -- who were you asked to pick out, Annette Lehman?

A No. The girl who signed this 1099 form.

Q And whom did you pick out as that girl?

A One of the girls, number six.

Q And do you see that woman in here today?

A Yes.

Q And who is it?

A That's her.

Q The defendant? I show you Government's Exhibit number one. Is that a picture --

THE COURT: They can't both be number one.

MR. MEYERSON: I'm sorry.

Q I'm sorry. Government's Exhibit number two. Is that -- is that a representation -- is that a picture of the line-up that you saw?

A Yes.

Q And you picked out number 6?

A Right.

Q That's the defendant.

MR. MEYERSON: I would ask that both Government's Exhibits 1 and 2 be admitted in evidence.

THE COURT: All right, do you have any objection or do you want a voir dire?

MR. BOBICK: May I inquire on the voir dire?

THE COURT: Yes. I might tell the Jury voir dire is before full cross-examination, just to determine admissibility of the exhibits.

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VOIR DIRE EXAMINATION

BY MR. BOBICK:

Q Did you say that in response to Mr. Meyerson's question, that all of the women had approximately the same coloring?

A Yes.

Q And they had all approximately the same facial features?

A Yes.

Q And you looked at the picture and you said that this was the picture of what you saw?

A Yes.

Q And this is the picture that you saw with all the people with the same coloring?

A Yes. If not hair coloring, face coloring.

Q I see. You mean they were all white?

A Yes.

Q Is that what you mean?

A No.

Q This is the picture that you saw?

A Yes.

Q Now, where is the original of this document?

A The IRS has it.

Q Well, do you have it?

A No.

Q But this isn't the original, is it?

A No.

Q This is a carbon copy?

A Carbon copy.

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Friedman-Direct

Q The original isn't destroyed, is it?

A No.

Q The original is still in existence, isn't it?

A Yes.

Q And it's around if somebody wants to get it, isn't it?

Q Yes.

MR. BOBICK: All right, at this time I have no objection to the picture, your Honor, but I object to this on the best evidence rule.

THE COURT: I never heard of a best evidence rule preventing the introduction of a carbon copy.

MR. BOBICK: Well, your Honor, at this point I feel there has been no foundation laid as a business record, there has been no foundation laid as a business record. It's only a carbon copy, and I feel, your Honor, that if there is going to be shown then the best evidence would be the original.

Q Mrs. Friedman, was this made out at the same time that the original was, all four copies?

Q They are all made together in one piece when they are made out.

A And that is your signature?

A Yes, this is the part that has the signature on it. The other copies don't have signatures on them.

Q Did you say that the original doesn't have the signature on it?

A Yes.

Q Does not?

A It's all in one form --

Q Sir -- Madam -- Did you say that the original does not have --

A Yes.

Q Signatures on it?

A Yes.

Q And did you say that the original is what went up to IRS?

A Yes.

Q So that the original is supposed to contain the signature of the party who signed it, or the original doesn't contain the signature?

A Doesn't.

THE COURT: Allright, I will receive it.

Q Was the original --

THE COURT: Wait a minute.

THE CLERK: Government's Exhibits 1 and 2 marked in evidence.

xxxxx

(So marked.)

THE COURT: All right, Mr. Meyerson.

Q The one that you have in your hand is the only one that's signed, is that correct?

A Yes.

Q And the top portion is sent --

MR. BOBICK: Well, your Honor, I am going to object to his testifying to something we don't have in front of us, or that we can't examine and I feel I have already been placed at a disadvantage by talking about something I can't see the original of.

THE COURT: Yes, you should not testify. You must simply ask her questions, Mr. Meyerson.

MR. BOBICK: And I feel, your Honor, also to discuss or talk about something, where the original we don't even have, or ask her to explain it with a copy when we only have this copy, is unfair.

THE COURT: Well, I thought she said this was a carbon copy.

MR. BOBICK: But according to what Mr. Meyerson just said, only part of it is carbon copy and the rest of it is something else.

THE COURT: All right, objection overruled. The question --

Q Could you tell us what portions of it goes to the Internal Revenue?

A The top.

Q The top half or the bottom?

A The top.

Q The top half?

A Yes.

Q And that would include all the information?

A All the information except the signature.

Q Right, so it would include Annette Lehman and the address and social security number.

A Right.

Q And that information was furnished to you by the defendant, is that correct?

A Right.

Q How long at the line-up when you -- when you picked out the defendant, how long did it take you to make-- to recognize her?

A A minute.

Q And is there any doubt in your mind --

A No.

Q -- that that is her?

MR. MEYERSON: Okay, I have no further questions.

THE COURT: Any cross-examination?

MR. BOBICK: Yes, your Honor.

Do we have material on the-- Jencks material on the 3500?

THE COURT: Come to the sidebar, please.

(Discussion at the sidebar.)

THE COURT : Any other 3500?

MR. MEYERSON: No. Copy of Grand Jury minutes .

MR. BOBICK: Any statements to any Federal Agents?

MR. MEYERSON: No.

THE COURT: And how about if there was a 302 on the agent who testified before, did you give that to Mr.Bobick?

MR. MEYERSON: He didn't ask for it.

THE COURT: You ought to do it before the witnesses testify, so we don't spend a lot of time on it.

XXXXXX CROSS EXAMINATION

BY MR. BOBICK:

Q Miss or Mrs. Friedman?

A Mrs.

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Q Mrs. Friedman, how long had you worked for OTB?

A Two and a half years.

Q When did you first begin to work for OTB?

A June 17th, 1971.

Q I see. When were there Superfectas run through OTB? What dates?

A I don't remember the correct dates.

Q What?

A I don't recall.

Q Well, when did the Superfectas stop from OTB?

A Soon after it was read about in the newspapers that there was wrongdoings going on.

THE COURT: Well, don't give it by reference to things. Give it by date as near as you can.

THE WITNESS: I don't remember.

Q What?

THE COURT: She said she didn't remember. Please speak loud enough for all 14 members of the Jury.

Q Yes, speak so I can hear you over here and if I can hear you, the jury can hear you, right? Do you remember what date you became a supervisor at OTB?

A January 30th.

Q January 30th of what year?

A 1972.

Q So that you were a supervisor of an OTB office from January 30th up until the present --

A 1973.

Q I'm sorry, January 30th, you became a supervisor. And what office did you become a supervisor at?

A Rego Park.

Q I see. Is that the office that you were a supervisor at on March --

A Yes.

Q 21st, 1973?

A Yes.

Q Is there any question about that?

It was January 30th that you became a supervisor?

A Now I am not sure of the date I became supervisor.

Q Is there any question about it?

MR. MEYERSON: She answered that she --

THE COURT: No, are you sure it was January 30th?

THE WITNESS: I forgot what year.

THE COURT: Oh.

Q Well, give your best recollection. What's

your answer? What's the best recollection?

A '73.

Q '73. Now, how long did you work in Rego Park prior to becoming a supervisor?

A A few months.

Q When you became supervisor was Superfect in effect?

A Yes.

Q So that when you became the supervisor people were betting on Superfecta?

A Yes.

Q Did the Superfecta winnings result in large payoffs by OTB?

A Yes.

Q And did every Superfect pay-off have to be approved by you?

A Yes.

Q So that you were approving Superfecta payoffs from the time you became supervisor on January 30th right up until Superfects stopped running.

A Um-hmm.

Q You have to answer. You can't nod your head.

A Yes.

Q Do you know how many Superfecta payoffs you might have approved or made during the period of time that you were the manager?

A I --

THE COURT: Not manager, I think it's a different position.

Q I'm sorry, supervisor, yes.

A Two or three.

Q Just two or three?

A Yes.

Q When was the first one?

A She must have been the first one.

Q She must have been? You don't remember? When was the last one?

A For Superfectas?

Q Yes.

A I don't remember.

Q What were the names of the other two or three Superfecta winners that you paid off?

A I don't recall.

Q What were the amounts that were wagered?

A A lot.

Q How much was the amount that was paid off?

A In the thousands?

Q In the thousands? When did you pay out -- if -- do you remember the figures? Withdrawn.

Do you remember the figures that you paid out?

A 20 odd thousand.

Q 20 odd thousand. Do you remember when you paid out 20 odd thousand?

A No.

Q Do you remember the name of the person that you paid 20 odd thousand dollars to?

A No.

Q Do you remember the -- what the person looked like that you paid 20 odd thousand dollars to?

A If I were shown pictures I probably could identify them.

Q If you were shown pictures you would probably remember, and if you weren't shown pictures, you wouldn't remember.

A Well, no, I can't describe people.

Q Well, can you tell me what the name is? Was it a man or a woman?

A No, males.

Q They were both males? No question about that?

A No.

Q And do you remember when the 20 odd thousand dollars was paid out?

A No.

Q Now, is your recollection very clear as to what happened on March 21st, 1973?

A It's pretty clear.

Q Pretty clear. And you have a good recollection as to everything that happened that day in the OTB office?

A Not everything that happened that day

Q Well, you were the supervisor of that shift. What time did you go to work?

A Seven-thirty in the morning.

Q So that from seven-thirty in the morning until what time did you get off work?

A Eight-thirty in the evening.

Q In the evening?

A Yes.

Q So from seven-thirty in the morning until eight-thirty in the evening you have a pretty good idea of what happened in that OTB office, don't you?

A Yes.

Q I mean there is no question about it? Will you describe what the office looked like on March 21st, 1973?

A Is it -- as it looks now?

Q Yes. There was nothing different on March 21st than there was now?

A When there is a woman winning a Superfefecta.

Q I know, but she wasn't part of the furniture, was she?

A No.

Q Would you describe the furniture of the office, please?

A Oh, then there was something different. We had black chairs, stools that the agents sat on.

Q Black chairs. That's behind the windows, isn't it?

A Behind the windows. Now there is brown stools.

Q Is that the only difference in the furniture?

A We were painted also. They painted the office light blue. And I don't remember what color it was before.

Q When was the painting?

A About last year.

Q You don't remember the exact date?

A No.

Q It could have been before March the 21st?

A No.

Q After March?

A Yes.

Q Well, was there anything else on March 21st that was requiring attention from workers or employees of OTB that isn't required at the present time?

A No.

Q Nothing at all? Well, do you remember whether or not there was a table set up for petitions to prevent OTB from being outlawed in Albany on March 21st?

A Yes.

Q And did you have in your office a card table set up near the door for people to sign petitions?

A Yes.

Q And did you have employees by that table?

A Yes.

Q All right, now on March 21st, 1973, will you tell us exactly what you saw happen concerning this defendant?

A She came to the window to cash a ticket.

Q She herself came to the window?

A Yes.

Q Was anybody else with her?

A I don't remember on that particular day if she was with anybody else.

Q I see. Go ahead.

A On other days she was with people. One person

Q All right, go ahead, what happened then?

A She didn't bet mostly --

THE COURT: She what?

THE WITNESS: She didn't bet.

Q She didn't bet? Did you know her first name?

A No.

Q Never spoke to her at all?

A No.

Q Did you see her in that OTB office on many occasions?

A A few times.

Q Did she win on a few times?

A No, all I ever recall is her winning this.

(Continued on the next page.)

Q Well, did she ever rebet the money?

A Yes.

Q What?

A Yes.

Q Well, did she rebet money that she won or did she rebet her own money?

A Money that she won.

A I see. So you remember her rebetting money, don't you?

A I remember closing up the line because she had some bets that we had to close up the line.

Q I see, but do you remember her rebetting?

A No.

Q Well, didn't you just tell us five minutes ago --

A She did -- she did rebet.

Q -- you remember her rebetting?

A On that day.

Q No, not on that day, did you ever remember her rebetting?

A Yes, she has rebet the money that she was paid off.

Q And did she win money on previous occasions, other occasions?

A She probably has.

Q Well, did you just tell us five minutes ago that you never remember her betting or winning any other occasions except on this time?

A I wasn't the only one in the office. There were other supervisors and the branch manager.

Q Do you remember her betting or rebetting in front of you?

A Yes.

Q All right, so then you know she must have won in front of you, is that right?

A Yes.

Q All right, now, when she rebet did she have to fill out a 1099?

A No.

Q You mean to say that if a person wins and just reinvests the money you don't have to fill out a 1099?

A No.

Q You only fill a 1099 when they take the money away?

A Yes.

Q So that if I won money on OTB and it was more than $600 or $900 then I wouldn't have to fill out a 1099 if I just reinvested the money with OTB?

A No, you would have to fill out a 1099 just for winning.

Q And rebetting?

A Not for rebetting?

Q Not for rebetting. So that you say that --

A A 1099 is filled when you win $600 or more on a $2 ticket.

Q Well, first of all, how much is a minimum Superfecta bet?

A They were $39 Superfecta winnings.

Q How much was the minimum amount that you could bet on the Superfecta?

A $3.

Q What?

A $3.

Q So then the $600 didn't have to do with it, does it

A There was two dollar Superfectas.

Q There were two dollar Superfecta bets?

A Yes.

Q I see, when was that two dollar Superfecta bet?

A One of the transactions had two dollar bets.

Q You're sure of that?

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A Yes, I'm quite sure.

Q That you could bet on the Superfect -- we're talking about the Superfecta now -- with a two dollar bet?

A No, I am not sure.

Q What?

A I don't remember the Superfecta so well.

Q You don't remember the Superfectas?

Well, anyway, whatever the bet was, if a Superfecta bet is made and a person wins and he reinvests that money in 97 different bets, you don't have to fill out a 1099?

THE COURT: Is that a question? What's the question?

MR. BOBICK: That's the question.

THE COURT: Put a question mark at the end of it as if it were not a statement.

THE WITNESS: If they come in with the winning ticket first we fill out the 1099 forms for the winning ticket and we give --

Q Yes.

A -- them the money and then it's a completely different transaction. Then they --

Q -- so then they rebet.

A So then they rebet.

Q Now when Mrs. Rogers came in with Superfecta winnings or with large winnings and you said she rebet, did you fill out a 1099?

A Not when she rebets.

Q Well, don't you give them the money before they rebet?

A Yes.

Q And didn't you say that she rebet?

A Yes.

Q So that you gave her the money before she rebet?

A Yes.

Q So when you gave her the money, did you fill out a 1099?

MR. MEYERSON: On which occasion is he talking about?

THE COURT: On other occasions.

MR. MEYERSON: It's so confusing.

THE WITNESS: When she won the money we fill out a 1099 form. When she rebet there was no 1099 form involved.

Q How many times did she rebet?

MR. MEYERSON: When and where?

THE COURT: No, how many times?

MR. MEYERSON: What period?

THE COURT: Within the witness's knowledge.

Q How many times did she rebet?

A About twice.

Q You remember?

A Yes.

Q And do you remember the amounts of the rebets?

A No.

Q Were they over six or nine hundred dollars?

A Oh, yes.

Q Or less?

Q They were over.

Q They were over? Well, if they were over did you fill out a 1099 at that time?

A No.

Q And the reason you didn't fill out the 1099 was not because she won enough but because she rebet?

A Yes.

Q So the only time that you filled out the 1099 is when somebody was taking the money away from OTB?

A Right.

Q Is that right?

A Yes.

Q Now, whose writing is the top part of Government's

Exhibit 1?

A That's all my handwriting.

Q What?

A All mine.

Q All yours?

A Yes.

Q This printed part is yours too?

A All this printing except the typwriting.

Q This printing part--

A Yes.

Q -- is your writing?

A Yes.

Q Well, I give you a blank piece of paper and I would ask you to do some printing for me. I will tell you what to print.

A Okay.

Q Would you print 53420-4836.

Would you print 1421 dollars and then 70. Would you print Annette Lehman, L-e-h-m-a-n. Would you print 3/2-/73, and would you print 3/21/73.

May I see it please?

MR. BOBICK: May we have this marked as Defendant's Exhibit?

THE COURT: All right.

MR. MEYERSON: May I see it?

THE COURT: Mark it.

THE CLERK: Yellow sheet of paper marked Defendant's Exhibit A for identification.

XXXXXXX

(So marked.)

Q Now, Mrs. Friedman, coming back to March 21st, 1973, did you have an employee by the name of Phillip Nelson?

A Yes.

Q And where is Phillip Nelson now?

A In the same branch.

Q Is that Rego Park?

A Rego Park.

Q And he still is an employee?

A Yes.

Q And did you have anybody else with the name Phil?

A No.

Q So that anybody referred to as Phil is Mr. Phillip Nelson?

A Yes.

Q Now, was Phillip Nelson on March 21st, 1973 in charge of the table where they were signing petitions for Albany?

A On that date I don't recall.

Q You don't remember?

A We were taking turns and I'm not sure who was on that table.

Q Who was taking turns?

A Phil and I.

Q Phil and you were taking turns?

A Yes. Someone had to be in the back room, someone had to be outside.

Q What do you mean in the back room?

A The back room is where the vault is.

Q I see. And is that where the glass cages are?

A That's the -- that's part of the back room.

Q Well, do the glass cages lead into the same room where the vault is?

A Yes.

Q So that there is no separate back room for the vault and then a room for the cages?

A It's blocked off by a door and everything. There is an opening. A slightly slanted walk to the cage.

Q I see, and is there a desk in the back back room?

A Yes, two desks.

Q Two desks and one of those desks was yours and one were Phil's?

A No.

Q Whose?

A One was the shift manager and one was the branch manager. Phil and my branch manager.

Q Phil and your branch manager?

A Yes.

Q And did you ever use that back back room?

A That was where the vault was.

Q Is that where you were?

A Yes.

Q So that on March 21st would it be safe to say that if you weren't at the table -- that's the card table where the petitions were -- you were in the back back room?

A No, I-- well, by the vault, yes.

Q Is that right?

A Yes.

Q Now, is there an entranceway from the front where the table was to the back and then to the back back?

A There are two security doors.

Q And how do you get through those doors?

A You have to ring a buzzer and tell them your name, who it is or show your ID -- identification.

Q Well, for instance, if Phil, Mr.Nelson, wanted to go in the back, he would have to stop, ring a buzzer and then somebody would open the door for him?

A Yes.

Q And he'll go through? He wouldn't have to --

A And there is only one door at a time. You have to let him in one door and then there is a little hallway and then you would have to let him in another door.

Q I see, and he would be under observation at this time?

A Yes.

Q Now, Mrs. Friedman, isn't it a fact that Mr. Phillip Nelson came back to the back back room with the identification and the winning ticket which resulted in the payoff of $1,421.70?

A No.

Q Isn't it a fact that you never saw this woman on that occasion of March 21st, 1973?

A No.

Q And that Mr. Phillip Nelson handled the entire transaction in the front of the OTB before he went into the back with the ticket?

A No.

Q It's not? Mrs. Friedman, isn't it a fact that this woman was known to you and to every other employee in that OTB office?

A Yes.

Q And isn't it a fact that she bet and she won and she lost and she did whatever you call business with the OTB office ever since you have been in that office?

A Not ever since I have been in that office.

Q Isn't it a fact she was well known?

A Yes.

Q And isn't it a fact that her name is Constance Rogers was known to everybody in that office?

A No.

Q They all knew her as Connie?

A As Annette.

Q As Annette? They all knew her as Annette, is that what you said?

A Didn't know her name, no.

Q Well, you just said Annette?

A Probably -- yes, it would be Annette.

Q Didn't they know her as Annette?

A If they knew her name they would say Annette?

Q What?

A The ones who knew her name would know her as Annette.

Q I see, so that whenever she came into the office you would say, or somebody who knew her name would say Annette.

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Friedman-Cross

THE COURT: Is that a question?

MR. BOBICK: That's a question. Question mark.

THE WITNESS: Nobody ever mentioned, not --

Q What did you --

THE WITNESS: The agents never mentioned her name.

Q Well, didn't you just say that they knew her as Annette?

THE COURT: She's testified to that. What's her next question?

THE WITNESS: People who knew her name knew her as Annette.

Q What people did you know that knew her name?

MR. MEYERSON: Your Honor, what relevancy has this?

THE COURT: No, I will let her answer.

THE WITNESS: The agents. Some of the agents.

Q What agents?

A There were so many. I don't remember. Phyllis Lamper.

Q What is it?

A Phyllis Lamper.

Q And you say that Phyllis Lamper knew her as

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Annette?

A As -- on March 23rd, no.

Q Did you say that the agents that knew her knew her as Annette?

A Yes.

Q All right, now I ask you, what agents do you say knew her as Annette?

A All I can think of is one, Phyllis Lamper.

Q That's the only one?

A The other ones didn't know her name.

Q The other ones didn't know her name. How about Mr. Nelson, did he know her name?

A Yes.

Q He knew her name? The fact is Mr. Nelson and Mrs. Rodgers had numerous conversations concerning betting together, did they not?

A Not numerous, no.

Q Well, you saw her talking to Mr. Nelson on many occasions, didn't you?

A No.

Q Never saw them at all?

A Once.

THE COURT: That's a --

THE WITNESS: When we had to deal with her to

get an open window for her bets.

Q For her bets, and that's the only time that Mr. Nelson spoke to her?

A As far as I know, yes.

Q As far as you know. Can you tell us what date it was that you opened this window to get her bets?

MR. MEYERSON: Your Honor, I believe she's testified that she purchased many times and that this is --

(Record read.)

THE COURT: I thought she gave an answer very softly and I didn't hear it. Do you remember what date that was?

THE WITNESS: No.

Q Was it before or after March 21st?

A I have no idea.

Q You have no recollection?

MR. BOBICK: Your Honor, at this time I would like to pass among the jury Government's Exhibit 1, which is the picture.

MR. MEYERSON: I think that's Government's Exhibit 2.

MR. BOBICK: Well, it's marked.

THE COURT: Let me look at it.

MR. BOBICK: That's the grand jury sticker.

THE COURT: It shouldn't be on it.

MR. BOBICK: Sorry, your Honor. I would like to pass the picture.

THE COURT: Yes. Any other questions, Mr. Bobick?

MR. BOBICK: Yes, your Honor.

THE COURT: Continue.

(Continued on the next page.)

R4a,

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BY MR. BOBICK:

Q Mrs. Friedman, do you have any independent memorandum of whether or not the $1,421.70 was paid by cash or check?

A No.

Q So that you don't remember whether or not you wrote out a check for $1,421.70 or whether you paid it in cash.

A It could have been half and half, but I am not sure.

Q Do you have a recollection of it being half and half?

A No.

MR. MEYERSON: She said she isn't sure.

Q I see. So that at this point in time, as you testified now, you don't remember whether it was paid by check or not?

A No.

Q Is the check made payable to the person who fills out the 1099?

A Or it could be made to cash.

Q Either one? And when you get the 1099, did you tell us that the copy of Government's Exhibit 1, which is in evidence, which is sent to the Internal Revenue Service,

does not bear a signature?

A Yes.

Q Yes, it does not bear a signature?

A It doesn't bear a signature.

Q It doesn't bear a signature. So that the only affidavit according to your testimony, is the one that's kept on the OTB files.

THE COURT: You're not trying to mislead the witness, are you?

MR. BOBICK: No, your Honor.

THE COURT: I don't think that's an affidavit.

MR. BOBICK: Yes, your Honor, there is.

THE COURT: I don't see any notary signature on it.

MR. MEYERSON: There is a statement --

MR. BOBICK: It's an ample answer.

THE COURT: It's not an affidavit.

MR. BOBICK: It's an ample answer, your Honor, or certification. It's a certification.

Q So that the only certification -- and I use the word certification as being the word used here -- is the one that's kept on the OTB form?

A Yes.

Q So that there is no swearing, according to

your recollection, to the United States Government then?

A No.

Q And is it your job to fill out all of the information that's contained on this 1099?

A My job or --

Q Well, you handled it, didn't you, it's your signature.

Q Right.

Q Is it your job?

A Right.

Q Fine. What's the social security number that you saw on March 21st, 1973?

A 534-20-4836.

Q That's the social security number?

A Yes.

Q All right, I'm sorry. What's the -- what's the driver's license number?

A There is none.

Q Is there a check next to driver's license?

A Yes.

Q Is there a number next to that check?

A No.

Q Is there an address next to that check?

A No.

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Q Did you fill that check in?

A No.

Q Well, is it your check mark?

A Yes.

Q And you didn't write any identification down?

A No.

Q How about the next line, does it say social security card?

A Yes.

Q Is there a check next to that social security card?

A Yes.

Q Is there any information written down there?

A No, because that's on top.

Q That's on top, there is no question about that? And do you remember whether or not the license was in New York or New Jersey?

A I don't remember. The license could have been "Other."

Q Well, does it say "Other" on the slip?

A No, it says license though.

Q Is there a place marked other?

A Yes.

Q Did you check others?

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A I didn't check it. So there was a license.

Q It was a license. Can you tell us whether it was a New York license?

A No.

Q Can you tell us whether it was a Pennsylvania license?

A No.

Q Or a New Jersey license?

A No.

Q You don't remember the license at all?

A No.

Q Was it folded in two pieces or was it just one piece?

A I don't recall.

Q You don't recall? Are you sure you saw a license?

A Yes, I wouldn't have checked it off.

Q What?

A I wouldn't have check it off if there wasn't any license.

Q Well, would you have wirtten it down if you had seen it?

A If I knew my job better at the time.

Q I see, and where it says social security card

you check it. Did you put a number down there either?

A Yes. Well, we don't have to put it next. It's on top.

Q I see, and did you ask for any other identification?

A No, only social security and driver's license.

Q What?

A Only social security and driver's license.

Q I see.

MR. BOBICK: Your Honor, at this time I would like the jury to see Defendant's --

THE COURT: All right, pass it around.

And you can proceed with your questioning while they are looking at it unless some juror holds up his hand and thinks he's being distracted from the testimony.

Q Now, do you remember what date you came to the FBI headquarters?

A No, not exactly what day. It was in the summer.

Q Do you remember what month?

A About August.

Q I see, and before you came to the FBI headquarters did you have a conversation with any FBI agents?

A Yes.

Q When was the first time you had a conversation with any FBI agents?

A On the phone when they told me to come down.

Q And that was the first time?

A Yes.

Q You had never prior to that time, spoken to anybody about this case?

A In Off Track Betting there was -- I don't know if they were FBI or Off Track Betting security.

Q Fine. When was that?

A When the Superfecta stuff was going on. I don't remember what date.

Q Well, when in time, what month?

A I don't remember.

Q What?

A Between April and August.

Q Between April and August. And would you tell us where this took place?

A In branch 29, Rego Park.

Q In Rego Park? Now, can you tell us whether or not people came to Rego Park? These people you're referring to.

A Yes, they came to Rego Park.

Q And did they take you in the back?

A Not me personally. It was my manager they were questioning.

Q Who was your manager?

A Ira Udell.

Q Excuse me?

A Ira Udell.

Q And were you present when they questioned Mr. Udell?

A Not at first. Then I was.

Q Was he present all the times that you were questioned?

A Yes.

Q Does Ira Udell still work for OTB?

A No.

Q He does not? All right, now at the time that you were qeustioned were you shown any photographs?

A No, not me.

Q Did they question you about the $20,000 winner?

A They were questioning about Superfecta winners.

Q Did they question you about the $20,000 winner?

A No.

Q Well, wasn't the $20,000 winner a Superfecta winner?

A They were -- they were questioning us whether we knew -- if we were aware that there were bookmakers in the parlor.

Q Did they question you about the $20,000 Superfecta winner?

A Not me personally.

Q Well, didn't you write the $20,000 winner up?

A Not a $20,000 winner.

Q All right, did they question you about Mrs. Rodgers?

A Yes.

Q Did they question you solely about Mrs. Rodgers?

A No.

Q Who else did they question you about?

A The guy she was with.

THE COURT: What?

THE WITNESS: Some guy she was with.

THE COURT: Oh.

THE WITNESS: I don't remember his name.

Q Do you remember what he looked like?

A No.

Q Did you see him on many occasions?

A As often as I saw her.

Q And you saw her a lot you said -- right?

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A A few times.

Q Right. What is this guy she was with -- what does he look like?

A He was heavy-set with gray hair.

Q Tall or short?

A Medium.

Q Medium height. Not as tall as I am, but taller than you?

A Yes.

Q And did you ever see a picture of him?

A No.

Q Nobody ever showed you a picture? Other than the time that you came to the FBI headquarters did anybody ever show you a picture of anybody?

A No.

Q You never saw a picture before?

A No.

Q Now, before you went into the room where you said there was a line-up, did you talk to any agents?

A No.

Q Well, tell us what you did when you stated you came to Federal Headquarters -- FBI Headquarters.

A I -- I was put in a room with other people from Off Track Betting.

Q I'm sorry, how did you get down there first?

A FBI agent drove me down.

Q I see, so that you were picked up somewhere?

A Yes.

Q Where were you picked up?

A My house. By my house.

Q By your house and the FBI agent drove you down. What was the name of the agent who drove you down, do you remember?

A No.

Q Have you seen him since that time?

A No.

Q So you have seen him just that one occasion and you haven't seen him again?

A Right.

Q And when he picked you up did you know he was an FBI agent?

A Well, when he showed me his badge I knew and I knew what time he was going to be there.

Q I see. You made arrangements to meet him?

A Right.

Q When did you make the arrangements, the day before?

A I don't recall.

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Q Well, have you been picked up many times by the FBI agent?

A No.

Q This was a pretty exciting moment, wasn't it?

THE COURT: Please, just go on with questions.

Q Did you make arrangements the day before to be picked up by the FBI agent, or was it sometime before that?

A It was within a week that he picked me up.

Q I see, and when did you receive the phone call, at work or at home?

A Both at work and at home

Q So that means you spoke to them on more than one occasion?

A Yes.

Q How many times altogether did you speak to the FBI agent?

A Not to the FBI agent, their secretary called me and told me I had to be --

Q All right, how many times did you speak to the secretary of the FBI agents?

A Once or twice.

Q Do you remember?

A No, I'm not sure.

Q But you spoke to them at home, you do remember that?

A Yes.

Q And you spoke to them at work?

A Yes.

Q You do remember that? And tell us what happened then, you made arrangements to meet him at your home at a certain time and place?

A Yes.

Q What happened then?

A He picked me up and drove me to the FBI agency, 69th Street somewhere.

Q Third Avenue. Did he have a conversation --

A Not there, he drove me to here I think it was, this building.

Q I'm sorry, I can't hear you.

A I think it was this building he drove me to.

Q He drove you to this building, and did you have a conversation with him when he was driving you?

A Not about anything that I had to go for.

Q Was there one agent or more?

A One.

Q And he was the driver?

A Yes.

Q Then what happened? He drove you to this building and what did you do?

A I waited around a lot.

Q Yes, then what happened?

A Then they took me in the room and explained that there is going to be a line-up and they showed me the room that the line-up was going to be in and I would just have to -- they asked me if I could identify the girl who signed her name to the 1099 form, to identify her if I can.

Q And are you sure it was in this building?

A Yes.

Q And did you see Mr. Meyerson at that time, the United States Attorney?

A He was in the hallway.

Q He was in the hallway too. And you are absolutely positive that no conversation took place before that concerning what you were doing there?

A No.

Q Had you been down to this building many times?

A This is the third time.

Q The third time. When was the first time?

A With the line-up.

Q And that was in this building?

A Yes.

Q And the second time?

A Last Wednesday.

Q Last Wednesday. And third time?

A It's today.

Q Well, isn't it a fact that you were also in this building on September 17th, 1973?

A I don't remember what dates?

Q What?

A I don't recall what dates.

Q Had you ever been in this building in September of 1973?

A I don't recall dates.

Q Had you ever been in this building on any other time than the three occasions that you told us about?

A No.

Q You're sure?

A Yes.

THE COURT: Four times is too many for one question, Mr. Bobick. Proceed.

MR. BOBICK: Well, --

Q Well, did you testify before a grand jury?

A Yes.

Q And what -- was that grand jury in this building?

A I get confused between this building and -- and another building.

Q What building?

A The FBI agency.

Q I see, but in September you did testify before the grand jury.

A Yes.

Q And it was in this building?

A Most likely, yes.

MR. BOBICK: I have no further questions.

THE COURT: Anything more?

MR. MEYERSON: I will just be very, very brief.

XXXXX REDIRECT EXAMINATION

BY MR. MEYERSON:

Q Are you sure that it's the defendant who is the woman who represented herself as Annette Lehman on March 21st?

A I am positive.

Q And are you sure that you were the one to fill out thatinformation?

A Yes.

Q And you observed the defendant at that time?

A Yes.

Q Was there anything peculiar about the social

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security card?

A It was an unusual one. Plated.

Q And did that also make you remember the defendant?

A That's why I remembered, yes.

Q And you had seen the defendant other times betting at OTB?

A Betting, right.

Q But not cashing?

A No.

MR. MEYERSON: I have no further questions.

THE COURT: All right, you can step down.

MR. BOBICK: May I inquire just one thing?

THE COURT: All right.

XXXXX

RECROSS EXAMINATION

BY MR. BOBICK:

Q When you say not cashing, you did say she rebet.

A By word of mouth we know the -- we knew the woman and they say that she -- you know, she bets back money. We were wondering -- we, because I knew by the handle.

Q Did you rebet with her?

A I have -- yes, I have sold her tickets.

Q Did you rebet with her, did she rebet with you?

A No.

MR. BOBICK: Nothing further.

THE COURT: All right, step down.

(The witness is excused.)

THE COURT: Next.

MR. MEYERSON: I call the next witness, Michael Sullivan.

(Continued on the next page.)

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MICHAEL SULLIVAN, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

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DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Sullivan, what is your employment?

A Off Track Betting Corporation. I am a cashier.

Q And what branch were you employed at on April second and April fourth of this year?

A Branch 22. That's 43rd Street, and Broadway.

Q Would you please examine Government's Exhibit number three and four and identify and describe those for us.

A These are 1099 forms that are used by Off Track Betting to claim when it's more than $600 on a two dollar bet and $900 on a three dollar bet.

Q And could you tell us who is the payee on that?

A Mary D. Grannum, 129 West First Street.

Q And the social security number on that?

A 153-34-9362.

Q Now, could you -- and could you tell us how much was paid out on that day, on April second?

A On this particular one it was $18,000.

Q And on April fourth?

A $37,000.

Q Now, could you describe the details of those

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days as best you can? Start with the first one, April second?

A All I recollect is receiving tickets amounting to approximately five or six tickets, which amounted to [illegible] $18,000.

Q Was this by a woman or a man?

A A woman.

Q And were people in the line at that time?

A On that particular day no, there weren't.

Q And when did -- when did you first meet the woman?

A When she approached my window with the tickets, at which time I proceeded to put them through the computer. When it read a price of $18,000 I asked for identification. At which time I was given her -- I believe her social security card and a driver's license with the name of Mary Grannum.

Q And what did you do after that?

A I proceeded to give it to the manager. At that time it was shift manager, which it's his job to fill out the 1099's.

Q Who is the shift manager?

A Sam Rosen.

Q And did this woman Mary Grannum wait at that time?

A Yes, she did.

Q And approximately how long was she waiting until the 1099 --

A The first day about a half an hour, which was April second.

Q And then Mr. Rosen came out?

A Right, which -- his procedure, he gave me back my tickets that I put through the computer and then he took care of the woman, which is the procedure of the management.

Q Okay. Now, can you tell us about April fourth?

A April fourth was that it was like one day passed and then the next day -- I had worked the three days straight anyway and then I didn't see the woman again and then she came in the next day, which was April fourth

Q How many people were on line at that time?

A Three.

Q And did she go to the end of the line or did she come in front?

A No, she approached me and said that Sam knows I'm here, that it's all right. And at that time I took the tickets and once again proceeded to put them through the computer, at which time I informed Sam that the -- this particular woman was here again with the identification and the tickets , and Sam took care of it and I would say she

waited about an hour and a half that day because of the lengthy paperwork, I believe.

Q How much is the average amount which you pay out to a person?

MR. BOBICK: Objection.

THE COURT: Overruled.

THE WITNESS: The average amount, $75, which is a lot.

Q Now, is there anything peculiar about the manner of this woman that would make you remember her?

A Well, at the time when she was by my window she -- she had glasses on, she was smoking. Things like this I remember. And, of course, the fact of the $37,000, it just stood out in my -- in my mind.

The fact that I just saw her like one day and then I seen her a day -- you know, I didn't see her for one day and then the next day she was back with this large sum again, it's --

Q Was she nice to you or --

MR. BOBICK: Objection to the leading form of the question.

THE WITNESS: She was --

Q Did she behalf in any particular manner?

A I think she was -- I would consider her a

bold, a bold individual.

Q And how far away was she from you during this time?

A Well, the window is about like two feet and at one point I asked her to stand toward the back while she waited for Sam, the manager, while I took care of other customers because I had a steady flow of customers and she'd be standing by this part of the window and someone else was in front of me and I didn't think it was any of her business to see what another individual was doing, which I think it was likewise for her too.

Q You say she was smoking.

A Yes.

Q Did the smoke go in your face?

A Well, when any customer is standing by the window there is an opening and it comes up into our face. At one point I felt that's what was bothering my eyes, I asked her to move away.

Q When she was standing there -- you say this was approximately forty minutes?

A Approximately.

Q And did you have a good view of her in the sense was it full face, side or just only from the back? You tell us.

A Full face view.

Q Do you recognize that woman in this Courtroom today?

A Yes, I do.

Q Could you point her out to us?

MR. MEYERSON: Let the record indicate that it is the defendant.

Q Now, sir, did you ever appear -- were you ever asked to come to a line-up?

A Yes, I was.

Q And do you remember where this was?

A 69th Street, the FBI building.

Q And do you remember approximately when it was?

A I believe it was sometime in August. Summertime.

Q And about how many women were in this line-up?

A I think there was about seven or eight.

Q And were you able to -- did you pick -- who did you pick out at first when you first made the identification.

MR. BOBICK: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: I -- I picked a different person than the defendant. I don't know who she was.

Q Why did you -- why did you do that?

MR. BOBICK: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: I just didn't want to get involved in the situation.

Q But did you know all along who it was?

A Yes, I did.

Q And who is it?

A The defendant that's sitting here now.

Q I ask you to look at Government's Exhibits number two in evidence. Is that a photograph of the line-up --

A Yes, it is.

Q -- that you observed?

A Yes, it is.

Q And which number is the defendant?

A Number 6.

Q Now, did you -- were you ever asked before the line-up -- were you ever shown a group of photographs and asked to pick out Mary Grannum?

A Yes, I was.

Q And whom did you pick out at that time?

A The same person that's sitting in this

Courtroom today.

Q The defendant?

A I was informed that that was the defendant, right. They told me at that -- at that time I first learned her name was Constance Rogers I think. That was the first indication that I found that it was a different name.

MR. MEYERSON: Could we have these marked?

THE CLERK: Five photographs marked Government's Exhibits five through five D.

XXXXXXXXX (So marked.)

Q Were these some of the photos you were shown--

A That's correct.

Q -- on that day? And could you pick out the picture thatyou picked out on that day? And that's the defendant, is that correct?

A That's correct.

MR. MEYERSON: That is Goernment's Exhibit 5C.

THE COURT: All right.

Q Now, before the line-up did you have a conversation with Mr. Sam Rosen?

A Yes, I did.

Q Will you tell us the nature of that conversation?

A The -- the general nature was we just didn't want to be involved in the situation that was going to arise, we felt that this was going to be pressed, and pressed hard towards -- we felt organized crime involved --

THE COURT: Not -- please. You have no right to feel anything like that. What you agreed to do is all right. Why --

THE WITNESS: And I just didn't want to get involved, in plain English, I just didn't want to get involved in the situation.

Q Again, when you saw the line-up was there any doubt in your mind that it was the defendant?

A No, there wasn't.

Q When you saw those pictures is there any doubt in your mind that it was the defendant?

A No.

Q And is there any doubt in your mind that it is the defendant sitting in this Courtroom independent of any line-up or photograph?

A No, it is not.

MR. MEYERSON: No further questions.

THE COURT: All right, Mr. Bobick.

CROSS EXAMINATION

BY MR. BOBICK:

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Q Mr. Sullivan, the pictures that you saw that were shown to you by the agent before you went to the line-up, was any of the other people whose pictures were shown to you in that line-up?

A To the best of my knowledge, no.

Q Well, you have got them all in front of you, haven't you?

Would you look and see if there is anybody else's picture there?

A With these pictures here, no, there isn't.

Q There isn't?

A No.

Q And none of the people whose pictures were shown to you before you went down to the line-up were in the line-up, were they?

A No.

Q Except this defendant?

A Right.

Q Now, Mr. Sullivan, tell us what happened on April second and April fourth?

A I was working as a cashier on a window, I was approached by a woman with a number of tickets for a large amount of money to be cashed. I proceeded to cash the tickets, and then I did my part of the job of turning

it over to the manager, which he processes the papers.

Q Yes.

A And the check, I believe he processed checks on both.

Q Checks or money?

A I believe it was checks.

Q Well, were you ever asked this question and did you ever give this answer, "And were you at the cashier's window when she received the money, is that correct? "Answer: Yes."

Now, were you asked that question and did you give that answer?

A Yes, I did.

Q Was it true?

A I don't recollect. I don't remember.

Q You don't remember whether it was true or not. Well, do you remember whether you were under oath at the time?

MR. MEYERSON: Your Honor, please --

THE COURT: Well, I will tell the Jury: The testimony comes from witnesses' answers and not from counsel's questions. A question that is asked in a loud and angry tone has no more significance than a question that is asked in a conversational tone.

You may proceed, Mr. Bobick.

BY MR. BOBICK:

Q Well, Mr. Sullivan, on September 16th, 1973, were you placed under oath before a grand jury in the Eastern District of New York?

A Yes, I was.

Q And did you get up and swear to tell the truth?

A Yes, I did.

Q And were you asked that question and did you give that answer?

A I don't recall.

Q You don't recall?

A No.

Q Well, who is Seymour Rothstein?

A To me as an individual who is he? I don't understand the question, how you want me to answer it. I know him as -- I know him as a customer of Off Track Betting.

Q Were you in that room with him now?

A Yes, that's correct, he's been there all morning with us.

Q Did you ever discuss this case with him?

A No, I didn't.

Q Did you ever discuss this case at all?

A No, I did not.

Q You never talked to him about it at all?

A Did not.

Q Did you ever place bets or accepts bets from Seymour Rothstein?

A No, I did not.

MR. MEYERSON: Your Honor, I don't understand the relevancy of whether he took bets from someone else.

THE COURT: I will let Mr. Bobick develop it.

Q Well, when you got done identifying the person carrying number 3 -- isn't that who you identified the first time?

A That's correct.

Q When you got done identifying number three, did you go right home or did you stop off at the FBI office?

A We were in the FBI building and we were asked --

Q Well, did you stop off at the -- at a little office?

A Not a little office.

Q A big office?

A Yes, right.

Q You stopped of at an FBI office?

A Right.

Q And did you have a chat with some of the FBI agents?

A That's correct.

Q Did you talk to any of the agents that you see in the Courtroom today?

A I think Mr. Gianturco came over in one or two incidents -- you know one or two minutes while I was there talking.

Q Yourefer to him as Nick, is that the way you know him?

A Nick Gianturco, that's how I know him.

Q And --

A I believe he was there for a few minutes while I was speaking to a Chuck Billing and a Mr. Joseph Fanning.

Q And did they tell you you must have made a mistake in identifying number three because she works for the FBI?

A No, they did not.

Q I see. Did they ever point out that you must have been wrong in your identification?

A No, they did not. I -- I -- I questioned them. They had a -- they had a signed -- if I can explain

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for one minute, they had --

Q No, I think it would be safe if I ask you the questions.

MR. MEYERSON: Your Honor, the witness should be allowed --

THE COURT: No, he's to answer the questions as they are put. You will have an opportunity to ask him if you want.

Q When you left the office or this room where you identified number three, was somebody with you?

A Yes, there was.

Q And at that point did they tell you you could go?

A No, they did ask me to come downstairs to fill out the papers that they were going to ask us about.

(Continued on the next page.)

Q And did you fill out those papers?

A I didn't fill them out. The agent was asking questions and he filled out the paper.

Q Did you sign them?

A Yes, I did.

MR. BOBICK: Your Honor, at this time may I hav a copy of those papers?

THE COURT: Do you have them, Mr. Meyerson?

MR. MEYERSON: Your Honor, we never received any such documents. I can call the FBI and see if --

THE COURT: All right, have it here for tomorrow morning.

MR. MEYERSON: Your Honor, there is an agent in my office who might have knowledge of these facts.

THE COURT: All right, do you want to call him?

MR. MEYERSON: Should I call him from here?

(Pause.)

MR. MEYERSON: He's not there, your Honor.

THE COURT: All right.

MR. MEYERSON: I will try to find him.

THE COURT: All right, can you continue, Mr. Bobick?

MR. BOBICK: Well, your Honor, with the

reservation that I would like to come back to it.

THE COURT: Yes.

BY MR. BOBICK:

Q Now, could you tell me, sir, by looking at the Government's Exhibits 3 and 4 in evidence -- did you offer it in evidence?

MR. MEYERSON: I do not believe they are admitted in evidence yet, but I will offer them at this time, your Honor.

THE COURT: They are still for identification, but I think they should be marked in evidence so there can be questions about them. I think they are sufficiently identified.

THE CLERK: Government's Exhibits 3 and 4 for identification marked in evidence.

MR. BOBICK: Your Honor, with the understanding that my same objection that I had to the original --

THE COURT: Yes.

MR. BOBICK: -- is reserved for this one too.

THE COURT: Same ruling and same exception.

Q I show you Government's Exhibits 3 and 4 in evidence and ask you if you can tell me, sir, whose writing appears on the carbon sheet?

A It's Sam Rosen, the shift manager.

Q And I ask you, sir, whose writing appears on the bottom part, which looks to be an original?

A Well, according to the signature it's Mary Grannum but I was not -- I didn't see him sign it.

Q You didn't see him sign it?

A No, I didn't.

Q Did you see him fill it out?

A No, I didn't. That is also done in the back office.

Q It was all done in the back office, all you know is that that's Sam Rosen's writing on the top and does it look like Sam Rosen's writing on the bottom, which is the original?

A Yes, it does.

Q It does, so that except for the signature where it says Mary whatever it is, you recognize all of the writing on that page as Sam Rosen's?

A That's correct.

Q There is no question about that? How often, how long did you say that this woman stayed in front of you?

A Directly in front of me, which is approximately two feet between the glass and the -- and the person there, ten, fifteen minutes, and then I believe she waited about a half hour to forty minutes on the -- towards the

back of my window.

Q Well, what does the woman have to do in relation to the 1099?

A What does she have to do?

Q Yes.

A The process of that, you mean?

Q Yes.

A Well, after handing me the identification and the tickets that were processed that's the end of her.

Q She doesn't have to fill out the 1099?

A No, it's filled out by the manager and she signs it in the presence of him.

Q She signs it, right?

A Yes.

Q And at this time when you were under oath on September 16th, 1973 do you remember being asked this question by Mr.Meyerson:

"Question: And she filled out the 1099, is that correct?

"Answer: Right.

"Question: And used an ID and filled out the 1099's?

"Answer: Right."

Now, were you asked those question?

A Yes, I believe I was.

Q And did you give those answers?

A Yes, I did.

Q And did she fill out the 1099?

A The actual filling out of it, no.

Q Yes.

A I understand the question to mean that she gave the identification to be used on the 1099 form.

Q He didn't ask anything about identification except that she filled out the 1099's?

A Well, my understanding was that that's what --

Q I see, so you were mistaken as to your understanding.

A Evidently, right.

Q So the fact is that she had nothing to do with the 1099's excpe presenting the identification and then signing it, is that your testimony?

A That's correct.

Q All right.

A No individual -- no individual fills out a 1099.

Q No individual fills out a 1099, you're familiar with 1099's, are you not?

A That's correct.

Q So you tell me where is the part A of the 1099?

A Where is part A?

Q Yes, what you have in front of you is marked part B, isn't it?

A Right.

Q Where is part A?

A I really couldn't tell you.

Q Well, how big is part A?

A I believe it's the same size.

Q I see, so that a person who signs part A would also sign part B.

A No, I -- I would like to change that.

Q Change it, yes.

A I believe it's a triplicate copy A, B and C.

Q Triplicate copy A, B and C.

A And the general bottom part is just ones like this. And the A part, I believe, is kept by Off Track Betting probably. Or the B -- or it's sent to IRS and the B part is either vice versa also and I believe the C part goes to the customer.

Q So that the C goes to the customer.

A It's just --

Q The B is the part that you have there is kept

by OTB?

A Or IRS, whichever keeps it, I don't know.

Q Well, what does it say on the top there, you have got it in front of you, what does it say, part A, part B, right in the corner?

A It says OTB copy.

Q OTB copy, so would you think that OTB keeps part B?

A Evidently, right.

Q And part C goes to the customer, is there any question about that?

A No, there isn't.

Q So that the only papers that get sent to IRS in your experience is part A?

A I really don't know. It has nothing to do -- I don't deal with 1099 forms.

Q But is there any question in your mind -- I'm sorry, you never deal with 1099's at all?

A No, I never deal with mailing them to IRS, or anything like that.

Q Do you deal with having them filled out?

A No, the manager fills them out. When I get the identification he fills it out and then --

Q Yes.

A I believe they send so many copies, a copy upstairs and they file a copy or whatever. I really don't know, I'm not a manager.

Q Is that copy of the B that you have an original signature?

A It looks to be an original signature, yes.

Q And is that -- is the person who signs the 1099 sign more than one time or just one time?

A Just once.

Q And that's the copy that's kept by OTB?

A Evidently that's the way it looks, right?

Q Is that right?

A That's the way it looks, yes.

Q And does your recollection of the completed form indicate that part A, which goes to the IRS, is not signed?

A Well, accorind to this evidently it must be because A would be on top of B, and this is not the barbon signature. Like I said, I really don't know, I don't send forms to the IRS.

Q Well, when you see the forms that you don't send to the IRS --

MR. MEYERSON: Your HOnor, he said he's not familiar with the forms and he's been questioned

about 15 minutes on this point.

MR. BOBICK: Your Honor, I object to the statement.

I haven't been questioning this man yet 15 minutes in total. I'm sure I must have asked him something else besides that.

THE COURT: You can continue. I don't think these questions are particularly relevant but you may proceed.

MR. BOBICK: Well, I certainly take exception to the Court's comments.

THE COURT: All right.

MR. BOBICK: With all due respect.

THE COURT: Well, I will ultimately rule that it is not necessary that the form sent to the IRS be signed.

MR. BOBICK: Well, your Honor, I believe that that would be a question of law.

THE COURT: It is a question of law. That is why I have to rule on it.

MR. BOBICK: It's a question of law but we won't rule on it yet.

Q Now, who was Seymour Rothstein?

A To me Seymour Rothstein is a customer of

Off Track Betting.

MR. MEYERSON: Your Honor, he was asked this question, then we went on to something else.

THE COURT: Mr. Bobick may come back to it. He may.

MR. BOBICK: I have come back to it.

Q Now, how often had you seen Mr. Seymour Rothstein at OTB?

A A hundred, two hundred times. He was a regular customer in 1501 Broadway, which is branch 22.

Q And did you ever fill out 1099's for Seymour Rothstein?

A I never filled out a 1099 in Off Track Betting.

Q Did you ever receive identification from Seymour Rothstein?

A I believe I did, yes.

Q And was it necessary for somebody to come and fill out a 1099?

A Yes, it was.

Q When you said before, come back again, when you said before that the woman came to you and you called out -- you took the identification and you called out to the manager and told him that she was here waiting for him --

A That's correct, that was the second day.

Q What about the first day?

A No, the woman just was a regular customer.

Q And did you call out for the manager?

A Yes, that's normal procedure.

Q And how do you call out for the manager?

A We have a bell at the side of the window which is pressed for manager.

Q So you pressed the bell?

A No, I can yell out Sam also.

Q Well, did you yell out Sam or did you press the bell?

A I don't really remember. It's too long ago.

Q But you do have a bell that rings the back back?

A That's correct.

Q And the back back is where the vault is?

A That's correct.

Q And the manager or the shift manger or whatever you have, sits in the back back, where the vault is?

A That's correct, he's also.

Q And whenever you want him to come forward you push the button, the bell?

A Most of the time but usually he's in the

general area too. He's behind in customer service.

Q So if he's there you call out and if he's not there you ring the bell?

A Right.

Q Do you remember whether he was there or whether you rang the bell this time?

MR. MEYERSON: He's already stated he doesn't remember.

THE COURT: Let him try again.

THE WITNESS: I absolutely don't remember.

Q Did you ever receive any money from Seymour Rothstein on how to testify in this case?

A No, I did not.

MR. BOBICK: I have no further questions of this witness.

THE COURT: All right, you should be back here tomorrow nevertheless, Mr. Sullivan, because we may have question about that statement.

MR. BOBICK: Yes, your Honor, reserving the right to cross-examine him tomorrow.

THE COURT: All right, we were going to adjourn at four. It's a little late in the day to start another witness. I think we will adjourn and we'll resume -- I think I will be ready to go ahead at

ten o'clock tomorrow.

MR. MEYERSON: Your Honor, I have a two-minute witness.

THE COURT: Two-minute witness? All right. Bring him on.

MR. MEYERSON: I would appreciate it.

THE COURT: I don't believe there is a two-minute witness, but I would like to have it demonstrated.

(Continued on the next page.)

M A R Y G R A N N U M, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Is that Miss or Mrs.?

A Miss.

Q Miss Grannum, could you tell us your address?

A 129 West First Avenue, Roselle, New Jersey.

Q And what's your social security number?

A 153-34-962.

Q And that's the same as what appears on Government's Exhibit 3 and 4?

A Yes.

Q Did you ever cash a Superfecta ticket?

A No.

Q Did you ever have identification stolen from you?

MR. BOBICK: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

Q Approximately when was this?

A I believe it was December 18th or 19th of last year. '72.

Q And what was stolen from you?

A My wallet.

Q And what was in the wallet?

A Well, various amounts of credit cards, all my ID, driver's license, work ID.

Q Social security card?

A Yes.

MR. MEYERSON: I have no further questions.

CROSS EXAMINATION

BY MR. BOBICK:

Q Mrs. Grannum, did you ever have any complaints that somebody was using your credit cards?

A Yes.

Q And do you -- who, who?

A Bamberger's.

Q Who?

A Bamberger's. In February I was notified.

Q And did she send you copies of the statements of the people that signed the credit?

A I saw them, I had to go down there and sign an affidavit and I saw copies.

Q And was the signature that you saw on Bamberger's your signature?

A No.

Q Do you remember what it looked like?

A Only that it was big lettering.

Q Is it the same signature that appears on there?

A Gee, I really -- it's not this. That definitely not.I don't -- I don't know, I really can't say.

Q What? Now, do you know anybody by the name of Pullman, Joseph Pullman?

A No.

Q In Jersey?

A No.

Q Do you know anybody by the name of Craft?

A No.

Q Do you know anything about Craft Hill Farms, did you ever hear that name before?

A No, not offhand.

Q What?

A Not that I recall.

Q Did you ever follow the races or racing?

MR. MEYERSON: Your Honor, --

THE COURT: No, he may ask.

MR. MEYERSON: The witness is being --

THE COURT: No, he may ask.

THE WITNESS: No.

Q Now, when you say your wallet was stolen, was it stolen as a result of a physical assault or was it that you just found out your wallet was gone?

A No, I found out the wallet was missing.

Q When the wallet was missing?

A Yes.

Q Do you remember where it was when you last saw it?

A Yes, it was in the cocktail lounge.

Q In the cocktail lounge, what cocktail lounge?

A Trader Jim's in --

Q Where is that?

A Trader Jim's. It's in Linden.

Q I'm sorry, I missed that.

A It's in Linden.

Q Linden, New Jersey?

A Right.

Q And without meaning to pry, were you in that lounge with Joseph Pullman that night?

A No.

Q Do you know Joseph Pullman nicknamed the Bear?

A No.

Q I see. Now, other than the Bamberger's credit cards did anybody else use your credit cards?

A No, not that I know.

Q Not that you know, nobody ever made claims against your credit or anything else?

A No.

Q You don't know who Joseph -- how Joseph Pullman got your wallet, do you?

A No.

MR. MEYERSON: Your Honor, she said she doesn't know. She never heard of Joseph Pullman.

THE COURT: All right.

MR. MEYERSON: The attorney is testifying Joseph Pullman has her wallet. It's completely --

THE COURT: No, it's a proper question on cross-examination.

Q Do you --

A Do I know Joseph Pullman?

Q Yes.

A No, no.

MR. MEYERSON: That is --

THE COURT: No, the question is do you know how Joseph PUllman got your credit card, if he did.

MR. MEYERSON: There is no evidence.

THE WITNESS: I have no idea.

All I know is that I lost it.

Q And you lost it in December?

A Right.

Q Not in April of 1973?

A No, December.

Q Now, in April of 1973, were you in the hospital or anything like that?

A No.

MR. BOBICK: I have no further questions.

THE COURT: All right, anything more?

MR. BOBICK: Your Honor, I don't want to know her address and I don't want it revealed but in the event that something comes up will we be able to recall her through the --

THE COURT: She gave the address and Mr. Meyerson is obliged to bring her back if you need her.

All right, you're excused, Miss Grannum. It was a two-minute witness on your side, but you can't prevent the other side for asking questions. Still, I'm glad that we were able to ecconomize her time. The Jury are excused until tomorrow at ten.

In the meantime remember, don't talk about the case among yourselves, don't talk about it with anybody else, not even your family at home and

don't talk to anybody in the Courtroom on any subject. Good night.

Just a couple of questions for counsel.

(Witness and Jury excused.)

THE COURT: Mr. Meyerson, could you give Mr. Bobick at the beginning of the morning or night if you have them, the 302's on grand jury testimony of tomorrow's witnesses?

MR. MEYERSON: I will give it to him in the morning, your Honor.

THE COURT: Yes, all right, and did you give him the 302 on Mr. Sullivan?

MR. MEYERSON: Yes, I did, your Honor.

MR. BOBICK: He did, your Honor.

THE COURT: And was there any on Miss Grannum?

MR. BOBICK: He didn't give it to me. Your Honor --

THE COURT: Well, if there was one let him have it because I have said he can recall. Have you any word about that statement which Mr. Sullivan is said to have signed?

AGENT: Your Honor, we checked at our office. What's the procedure at a line-up, that the individual makes a statement saying I have witnessed the line-up

and I chose such and such a number. We have these still in our file, the originals that were filled out and we'll have them in tomorrow morning.

THE COURT: All right, you will have it in the morning. You'd better have Mr. Sullivan here I think.

MR. BOBICK: Your Honor, I did not get the progress report I was to get.

MR. MEYERSON: I have copies of that.

THE COURT: You have a copy downstairs? Let Mr. Bobick go with you if you have it tonight.

All right, we'll continue tomorrow.

Oh, one other thing, are you going to produce the IRS originals or are you going to argue they are unnecessary?

MR. MEYERSON: Your Honor, no, I have a witness -- we received it from Andover, Massachusetts Courthouse on the Magnovox and I will have a witness testify she received it on the Magnovox and compared it by telephone with the original person. I hope that satisfies the Court rather than bringing someone from Massachusetts Courthouse.

THE COURT: I ordered the latest volume on computer law and it has not come. I will hear Mr. Bobick on it in the morning.

MR. MEYERSON: I think it's also by letter. They also sent it by letter and a copy is received by letter and over the machine.

THE COURT: I thought you had somebody from OTB who said he had sent it.

MR. MEYERSON: I have one who says that in the ordinary course it was sent.

THE COURT: All right, gentlemen, good night.

(Court was adjourned until ten o'clock A.M., January 29, 1974.)

* * *

WITNESSES

NAME	DIRECT	CROSS	RED.	REC.	VOIR DIRE
Edward Mallon	39	40			
Rosalyn Friedman	43	54		96	
Openings:					
Mr. Meyerson	30				
Mr. Bobick	33				
Edward Mallon	39	40			
Michael Sullivan	98	106			
Mary Grannum	126	127			

EXHIBITS

GOVERNMENT'S	DESCRIPTION	IDENT.	EVIDENCE
1 & 2	2 documents		51
3 & 4	2 documents		114
5 through 5D	5 photographs		105
DEFENDANT'S			
A	Yellow sheet of paper	71	

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

CONSTANCE ROGERS, : 73-CR-906

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

January 29, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.D.S.J.

WINFRED D. LEWIS
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, ESQ.,
United States Attorney
for the Eastern District of New York

BY: HAL MEYERSON, ESQ.,
Assistant United States Attorney

EDWARD BOBICK, ESQ.,
Attorney for the defendant

MR. BOBICK: Your Honor, just to refresh my recollection -- and I hope I am right, I thought I asked that Miss Friedman be available in case we needed her for further examintion.

THE COURT: Yes, she will be available,

MR. BOBICK: That was the understanding that I had. Mr. --

MR. MEYERSON: I am --

THE COURT: She didn't have to be here until you notify me.

MR. BOBICK: No, but the point is he said he expects to finish their case this morning.--

MR. MEYERSON: We have her number.

MR. BOBICK: -- so that I will need her this afternoon.

THE COURT: I see.

All right, have you given the 302s to Mr. Bobick, Mr. Meyerson?

MR. MEYERSON: I just gave him a copy of the report and I will give them to him.

THE COURT: And did you find the statement that Mr. Sullivan signed, if he did?

MR. MEYERSON: Yes, we have -- it wasn't a statement, it was just a short statement that he saw a lineup, and I have that.

THE COURT: All right.

Have you given that to Mr. Bobick?

MR. BOBICK: I have received nothing but the progress reports, your Honor.

MR. MEYERSON: Here, I am turning over two signed statements, one by Roslyn Friedman and the other by Michael Sullivan. None could be found -- I don't think any was taken -- for Sam Rosen. These are originals so I will just have Mr. Bobick look at them.

THE COURT: All right, let Mr. Bobick look at them. And have you turned over the 302s?

MR. MEYERSON: Yes, I will do that now.

THE COURT: Have you any requests to charge, Mr. Bobick?

MR. BOBICK: No, your Honor. No, your Honor.

THE COURT: Is that all?

MR. MEYERSON: That should be all, your Honor.

THE COURT: All right, let's bring inthe jury.

(Jury in.)

THE COURT: All here.

Good morning, ladies and gentlemen.

Mr. Meyerson, bring on your next witness, please.

ROSE DE CARA, called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: All right.

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mrs. DeCara, what is your occupation?

A Revenue officer.

Q And how long have you been a revenue officer?

A Well, six years, five -- six years.

Q And that's with the Internal Revenue Department?

A Yes.

Q And are you familiar with the proper preparation and filing of 1099 miscellaneous forms?

A Yes, I am.

Q Now, did you receive exact copies of original 1099 forms which were received from Andover Center Service by transmission over Magnavax wire?

A Yes, I did.

Q And were those also confirmed by mailed copies?

A Yes, yes.

Q Can I have --

A These are the Magnavax --

MR. MEYERSON: These are the Magnavax.

Can I have this marked as a Government Exhibit?

THE CLERK: Document marked Government Exhibit 6 for identification.

(So marked.)

BY MR. MEYERSON:

Q And these are the ones received by mail confirming them?

A Yes.

THE CLERK: Set of documents marked Government's Exhibit 7 for identification.

(So marked.)

BY MR. MEYERSON:

Q I show you Government's Exhibit No. 1, 3, and 4 and ask you if those are the same as the Government's Exhibit ? That would be the same top half.

A Yes.

Q You don't have the bottom half; is that correct?

A Yes.

Q Now, is it the responsibility of whoever pays out the money to obtain a Social Security number?

MR. BOBICK: Objection, your Honor.

THE COURT: Sustained.

Let the witness testify, please.

BY MR. MEYERSON:

Q Could you tell us if the Social Security number has any importance?

A Yes, definitely.

The Social Security number is the taxpayer's identifying number. The taxpayer's account is set up under the Social Security number.

Q Could you tell us when 1099s are required to be filed, such as that?

A In this case in reference to this --

Q Yes.

A -- I think it's $600.00 for a $2.00 ticket and $900.00 for a $3.00 ticket.

MR. MEYERSON: I have no further questions.

THE COURT: What?

MR. MEYERSON: I have no further questions.

THE COURT: Are these -- are these exhibits just remaining for identification?

MR. MEYERSON: Oh, I am sorry, I offer them in evidence now. Thank you, Judge.

THE COURT: Any objection?

MR. BOBICK: May I see them, your Honor?

THE COURT: All right.

MR. BOBICK: I have no objection.

THE COURT: Let them be marked.

THE CLERK: Government's 6 and 7 marked in evidence.

(So marked.)

BY MR. MEYERSON:

Q And these are the same as the Government's exhibit you have before me under the name of Annette Lehman and two under the names of Mary Grannum?

A Right.

THE COURT: All right, do you want to examine, Mr. Bobick?

CROSS-EXAMINATION

BY MR. BOBICK:

Q Mrs. DeCara, you don't know anything about this case, do you?

A No.

Q You just merely were asked to call up and check out and you did that and that's what you did and that's what you brought, right?

A Yes.

MR. BOBICK: I have no further questions.

THE COURT: A ll right, you are excused. Thank you.

(Witness excused.)

M I C H A E L D. S H A G A N , called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: All right, sit down, Mr. Shagan.

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Shagan, could you tell us your present position?

A Yes, I an vice president for Corporate Services of the New York City Off-Track-Betting Corporation.

Q And how long have you been such?

A Well, my title has changed as of yesterday. Prior to yesterday I was vice president for Security and Corporate Services, and in that position, I had been in that position for well over a year.

Q I show you Government's Exhibits 1, 3 and 4. Could you identify what those are?

A Yes, Government's Exhibits 1, 3 and 4 are Form 1099s, copy B. These are the forms that we require be filled out before payment for any winning OTB ticket can be made where the winning odds are 299 to 1; in other words $600.00 or more on a two-dollar bet, etc..

Q And $900.00 on a three-dollar bet?

A That's correct.

Q Now, how many copies are there of the 1099 that are made out?

A We have -- we have just changed our form. I -- I gather --

MR. BOBICK: Objection to what they just did, your Honor.

Q How many --

THE COURT: I think Mr. Meyerson is anticipating. You go back to March or April of '73.

Q How many were there in March or April, 1973?

A In that period of time there were four copies. It was a four-ply form. It was filled out once but there were four copies.

Q And can you tell us where each copy went to?

A Yes, the original of the form is given to the customer who presents a ticket for payment. The other three copies are returned to OTB Central Offices at 1501 Broadway in Times Square, where the people in the Finance Department arr ge for two of these copies -- for -- for one copy to be ft here as our official record, and for two copies to be rwarded on to the State Tax Department.

Our arrangement with the State Tax people is

that they then forward one of these copies on to the Federal Government.

Q To the Federal Government?

A That's correct.

Q And that is your copy that's returned?

A Yes, that's right.

Q And is that the only copy that's actually signed by the defendant -- by someone who is a payee? I'm sorry.

A Yes, I believe so.

Q And there is a statement here that, "I certify that I am the true owner." Is that you -- your statement that you put in, or is that something required by the Federal Government --

MR. BOBICK: Objection, your Honor.

THE COURT: Overruled.

MR. BOBICK: Your Honor, there is no testimony that this man is qualified that he put the statement in, that he prepared it or that he knows how the statement was put in.

THE COURT: Well, if you want some foundation, go ahead, Mr. Meyerson.

Q If you know, who put it on? Who suggested it?

MR. BOBICK: Objection.

THE COURT: Overruled.

You may answer.

THE WITNESS: If I know who put it on?

Q If you know, who suggested that statement?

A This -- this language is -- is language that's required by the Federal Government. I -- I cannot say to you the exact words because I have not in the recent past, compared this language to the language in the statute, but there is this language required by the Federal Government.

Q Now,was there a branch 29 on May 21st -- were there any checks made out -- on March 21st, were there any checks made out for that day?'

A In -- in terms of payment to winning customers?

Q Yes.

A No, sir, there were not.

Q And how about April second and April fourth for branch 22? Would these be the checks?

A Yes, these -- these would be the checks. There is -- there is more here than just April 2 and 4.

MR. MEYERSON: And April 4. Could we have these marked in a series, April second, one, and April fourth, one?

THE CLERK: Two sets of checks marked

Government's Exhibits 8 and 9 for identification.

(So marked.)

Q Mr. Shagan, is there a rule about not having any --

MR. BOBICK: I object to the leading form of the question, your Honor.

THE COURT: Let me hear the question. Go ahead, Mr. Meyerson.

Q Is there a rule, Mr. Shagan, pertaining to one or more checks being written over $10,000?

MR. BOBICK: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: Yes, Mr. Meyerson, our rules say that no check should be written for over $10,000. of these kinds of checks.

In other words, checks within a branch to a customer.

Q Right. So if someone won $18,048.60 there would be one check for $10,000 --

THE COURT: No, ask what would happen.

Q What would happen?

A Well, that would depend on whether or not the customer was paid by cash or by check.

Q If they were paid by check?

A If they were paid by check then there would have to be at least two checks, and presumably there would be only two checks.

MR. MEYERSON: I offer these in evidence, your Honor.

MR. BOBICK: May I inquire on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BOBICK:

Q Did you ever write these checks?

A No, sir.

Q We're talking about series number 8, which are April second, right?

A No, I have never written any checks.

Q You never wrote any of those checks. Can you tell me, sir, the number of checks that you have there?

A There are nine checks here.

Q Can you tell me the total amount involved in those checks?

A I would need a piece of paper to add it up, but if you want me to take the time --

Q Approximately.

A A little bit over $36,000.

Q $65,000. Can you tell me, sir, whether or

not it's possible to get paid part in check and part in cash?

A Yes, sir, it is.

Q Can you tell me from those checks whether it's part in cash or part in checks?

A Not from the checks.

Q Can you tell me from those checks what checks were signed by Mary Grannum?

A By Mary Grannum?

Q Yes.

A Excuse me. All these checks were made out to cash --

Q Sir, would you just tell me which checks wer signed by Mary Grannum or issued to Mary Grannum?

A Neither.

Q None?

A Neither signed nor issued.

Q None of those checks?

A That's right.

Q Can you tell me which of those checks were issued to Constance Rogers?

A None.

Q None? Can you tell me which of those checks --

A Excuse me, I -- I have to change that.

Q Yes.

A There is no indication on the checks as to either Mary Grannum or Constance -_

Q Well, that's all you have before eight is the checks, isn't it?

THE COURT: Well, you asked if they were issued to them?

THE WITNESS: I cannot say that.

Q Do these checks indicate which checks were paid as part of a cash payment and which was part of a full payment in check?

A No, sir, it doesn't indicate on the check.

Q Take the first check that you have. What's the amount?

A $10,000.

Q Now, could you tell whether or not that $10,000 check was given to pay out a $25,000 payment where $10,000 was by check and $15,000 was by cash?

A No, sir, you can't from the check.

Q Could you tell me whether that was paid out for an 11,000 payment where it was 10,00 by check and one thousand by cash?

A Sir, that information is not available from the

check.

Q Can you -- well, is there a place where you could get that information?

A Oh, certainly, there would be records.

Q Where?

A Well, the check book usually will indicate the serial number of the ticket.

Q Usually. Do you know whether the checkbook in this case so indicates?

A I have not checked.

Q Are the checkbooks kept by OTB in the regular course of their business?

A Yes, sir.

Q Where are the checkbooks kept?

A Kept by OTB in the central office.

Q Where arethey?

A Usually in the central branch.

Q So the checkbooks would be able to tell us what checks were issued for what purposes, is that right?

A Well, we know what purposes they are issued for, they are issued as payment to customers.

Q Well, to whom they were issued.

A Not if it was made out to cash, sir, not necessarily.

Q Would it tell you --

A We would then be able to compare that with the 1099 and tell you to whom they were issued.

Q Okay, fine. Do you have those books available?

A I don't have them with me.

Q So that those checks actually tell you nothing about any of the transactions on April second except these were various amounts paid to various peoples whose name you don't know, whose amounts you don't know and for what you don't know, is that correct?

A I can't say yes to the way you put it, but you're generally right.

Q Generally, yes.

A The checks have limited information on their face, yes, sir.

Q And you can't tell me what checks there were issued to Mary Grannum, can you?

A No, sir.

Q And you can't tell me what checks were issued to Constance Rogers or to Joe Smith or anybody else?

A Not from the checks.

Q And if I asked you those questions, would your answers be the same on this?

THE COURT: May I see these checks?

THE WITNESS: Yes, sir, two.

Q The answers would be the same?

MR. BOBICK: I object to both of the series of checks.

BY MR. MEYERSON:

Q Are those kept in the regular course of business, Mr. Shagan?

A Yes, sir, they are.

Q And those are the only checks that came from those branches on that day, is that correct?

A I believe so. I would have to compare them to my copies, but I believe they are.

Q And all of them oare made out to check -- to cash, is that correct?

A That's correct.

Q So you can't determine who and to what?

A No.

MR. MEYERSON: I offer them as evidence, your Honor.

MR. BOBICK: Well, your Honor --

THE COURT: Well, Mr. --

BY MR. MEYERSON:

Q Are they kept in the regular course of business?

A Yes, sir.

MR. BOBICK: Objection.

Your Honor, business records are business records, but they have to be competent, relevant and material to the case on trial, not for the purpose of inundating the Court with facts and figures.

MR. MEYERSON: Your Honor, the only reason I brought this out is because Mr. Bobick kept on insisting -- kept on making a point of whether checks that were cashed were issued. I was trying to do my best to find out if these were the only checks issued and then if Mr. Bobick wants to claim that these were the checks from Miss Rogers, or they weren't the checks for Miss Rogers, it's up to him.

THE COURT: Mr. Shagan, what's the reason for making --

MR. BOBICK: I object to the statement made by Mr. Meyerson, your Honor. I object to the statement made by Mr. Meyerson.

THE COURT: Well, it was argument.

MR. BOBICK: Mr. Bobick doesn't have to prove anything, neither does the defendant. The burden is on the Government to prove it.

THE COURT: All right, there is -- this is all argument.

Mr. Shagan, what's the purpose of making out checks to cash instead of to a named individual?

THE WITNESS: The Chemical Bank on whose account these checks are prefers them to be made out to cash in terms of -- of their ability and willingness to cash the checks. We have an arrangement with them that there are certain designated branches of the Chemical Bank where persons, where these checks are made out to the branch may get them cashed easily.

THE COURT: Having in mind my own experience, that when I go to cash my own check, to cash I endorse it on the bank, do you know what the reason is for the practice of these checks being cashed without anyone signing the back?

THE WITNESS: I do not know, your Honor. I have previously, in another situation, asked the finance department about that, our OTB finance department, and they said that this was the desire of Chemical Bank, that they would do it relying on the fact that it was issued by OTB rather than on the question of signature by the party cashing.

THE COURT: I am going to exclude them at the present time. I don't think their relevancy

is established.

Let me see the other set, too.

Q Do you think that's good banking practice? I suppose -- I withdraw the question.

MR. MEYERSON: Your Honor, there is -- the reason for that would be so that --

THE COURT: I am not going to take your time either.

All right, any other questions of Mr. Shagan?

BY MR. MEYERSON:

Q Could you tell us if the payoffs on March 21st, April second and April fourth did require 1099's?

A Yes,sir, they did.

MR. MEYERSON: I have no further questions.

THE COURT: Any cross-examination?

MR. BOBICK: No, no cross-examination.

THE COURT: Well, it's up to you, Mr. Meyerson.

MR. BOBICK: I'm sorry, may I ask one?

CROSS EXAMINATION

BY MR. BOBICK:

Q Mr. Meyerson asked you whether or not the payoffs on March 21st require a 1099. If the payoff on March 21st represents a six dollar bet, would that represent -- would that require a 1099? At what are you looking, sir?

A I am looking for the exact amount. I had previously --

Q $1,421.70.

A You're saying if that was the amount to be paid for a six dollar bet.

Q Yes.

A Then the amount on a three dollar bet would be half that or 700, it would not require a 1099.

Q Can you tell me from any records that you look at, whether it's a two dollar bet or a three dollar bet or a six dollar bet or a ten dollar bet?

A Yes, sir, the best that --

Q Where's the information that tells you that?

A It's a matter of my knowledge that the bets were -- the minimum bet was three dollars, sir, on those races on those days.

Q Could you bet six dollars?

A Yes, but the payoff was calculated in terms of a three dollar bet.

Q Do you have records in terms of what the payoff was?

A That's what I was looking for, sir.

Q Oh, go ahead and look.

A Which day's race are you talking about, sir?

Q Marcy 21st. Oh, can I withdraw the question? Can I withdraw that question?

MR. BOBICK: May I have your exhibit number one?

MR. MEYERSON: Which is that?

MR. BOBICK: The 1099.

MR. MEYERSON: They are up there.

Q Yes, this is the one.

A Yes, I believe that's for the race of March 20th.

Q March 20th?

A It was cashed on March 21st.

Q Is it not the practice of the OTB when somebody comes in with identification to receive copies of that identification? Or to make notations on it?

A Yes, sir.

Q And would you tell me, sir, what kind of identification is required in order to cash or to fill out a 1099?

A We require a social security plus one other form of identification.

Q Okay, and is it necessary to put down what kind of identification that you -- that they saw?

A Yes, sir.

Q And is it necessary to put down the numbers of the identification?

A This is what we are -- our people are supposed to do, yes, sir.

Q Well, that's the rules, isn't it?

A That's our rules, yes, sir.

Q Will you tell me what the number of the driver's license was?

A The driver's license number is not down here, sir.

Q Well, can you tell me anything else about the identification on that date?

A Yes, sir, I can tell you the social security number.

Q You can? You can tell me a number that appears there? Do you know, sir, whether that is a social security number of whether the person copied the wrong number?

A No, that wasn't the question you asked me. In answer to this question I cannot tell that.

Q I see. Now, if the driver's license was --

MR. MEYERSON: Your Honor, if I may: This is going far beyond the scope of direct. This is --

THE COURT: Well, I will let the defendant examine anyway. It will save calling Mr. Shagan back.

Q Isn't it the rule that the party who makes out the 1099 copies any information on to that report?

A Yes, sir.

Q And wouldn't you expect a supervisor to follow those rules?

A Yes, sir.

Q And a supervisor is trained on how to fill out 1099's?

A That's correct.

Q Do you have a regular course for teaching supervisors how to fill out 1099's?

A It's -- it's part of the regular course, yes.

Q And she goes to school, or he goes to school for that purpose?

A Not for that purpose alone, but it is covered in our training course.

Q In the training course?

A That's right.

Q Before you make a person a supervisor they are authorized to act and to act properly in filling out a 1099, aren't they?

A That's correct.

Q And would you say that 1099 was properly prepared?

A No, it was not.

Q It was not properly prepared and you don't know why it wasn't properly prepared?

A No.

Q Except you know it wasn't properly prepared?

A That's correct.

Q And do you know whether or not there was any statements made about looking at a metal social security card, or a regular social security card or is there anything -- any difference?

MR. MEYERSON: Your Honor, this was previously testified.

THE COURT: Sustained.

(Continued on the next page.)

MR. MEYERSON: She was here. He's only looking at --

THE COURT: I have sustained the objection.

MR. BOBICK: Yes. She's coming back though. No further questions of this witness.

MR. MEYERSON: Thank you, Mr. Shagan.

(Witness excused.)

THE COURT: All right, you can step down.

S A M R O S E N, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Rosen, what is your employment?

A Off Track Betting. I am a manager.

Q And on April second and April fourth what was your employment?

A I was a shift manager at 1501 Broadway.

Q That's branch 22?

A Branch 22.

Q Would you please examine Government's Exhibit number three and four and tell us whether that's your signature as the OTB representative?

A Yes, it's a 1099 form, two of them, that I filled out.

Q And could you tell us who was the payee listed on there?

A Mary D. Grannum.

Q And there is an address and a social security card -- number on there.

A Correct, right.

Q And how did you receive that information?

First let me ask you, did you prepare that form?

A Yes.

Q And did you prepare everything on there?

A Yes, to the best of my recollection.

Q Who -- and who signed as -- who -- who -- who signed as receiving the money?

A Mary Grannum.

Q Now, where did you receive the information of the social security number that you put down and the address?

A My -- the cashier on duty that day called me to the window. He had a number of tickets or a ticket for a big payout, and he gave me the required information, the social security card and the driver's license, which is required of any tax amount that is to be paid out.

Q And did you see who was the payee at that time?

A Yes, I did.

Q And did you then fill it out?

A Well, I saw the payee at the time when I asked her to sign her signature to this form.

Q I see.

A Or -- and I also saw her at the time when I gave her the checks.

Q Okay. Now, were the checks made out to cash?

A Yes.

Q And could you -- could you tell me how long you saw her? Approximately how long.

A Well, I saw her for -- when she signed it, when I gave her the checks. I would say for about five minutes. She was in the parlor longer. However my personal observation was for about five minutes.

Q And how about the second time, two days later. Was it the same person?

A Same person.

Q And how long were you able to observe her at that time?

A I would say about the same thing, about five minutes personal observation.

Q And how far away was she from you at those times?

A I would say she was standing on the other side of this railing.

Q About a foot?

A Yes, about a foot.

Q And was she facing you full face?

A Facing me full face.

Q Now, did you ever see this woman again after that?

A After that the only time I saw her was in the line-up.

Q At this line-up did you identify her immediately?

A No.

Q Why didn't you?

MR. BOBICK: I object, your Honor.

THE COURT: Overruled.

THE WITNESS: I didn't want to identify her because I didn't want to become personally involved in this case. I am a family man, I just --

MR. BOBICK: Objection, move to strike it out, your Honor.

THE COURT: All right, that's -- strike out the last part.

Q I show you Government's Exhibit 2. Is that

the photograph of the line-up?

A Yes.

Q And did you -- did you subsequently identify-- did you -- did you subsequently make a second identification?

A I did.

Q And who did you pick out?

A Number six on this photo.

Q And do you see that person in Court today?

A I do.

Q Can you pick her out for us?

A That's Mary Grannum sitting with her attorney.

MR. MEYERSON: Let the record indicate that it is the defendant.

Q Now, did you have a conversation with Michael Sullivan prior to the line-up?

A To the best of my recollection I imagine I did.

MR. BOBICK: Objection, your Honor, to any answers he's going to give further if he's only going to imagine that there was a conversation.

THE COURT: You mix them up when you say to the best of your recollection you imagine. To the best of your recollection, did you?

THE WITNESS: To the best of my recollection

I did.

Q What was the nature of that conversation?

A Whether we are going to identify Mary Grannum or whether we are not going to identify Mary Grannum.

Q And what is it that you said at that time to your best recollection?

THE COURT: Well, now just what their decision was. I don't want a lot of conversation.

THE WITNESS: The decision was that we were not going to identify her.

Q And what made you change your mind?

A After having long conversations I decided to be a good citizen.

MR. BOBICK: I'm sorry, I missed the first part.

THE COURT: Read it, Mr. Lewis.

(Record read.)

Q Conversations with whom?

A My wife.

Q And did you speak to the FBI?

A The FBI men.

Q Now, prior to the line-up, did you also have a conversation with a man named Seymour Rothstein?

A Yes.

Q Could you tell us the nature of that conversation

MR. BOBICK: Objection.

THE COURT: Sidebar.

(Discussion at the sidebar.)

THE COURT: Give me your offer of proof on this.

MR. MEYERSON: Seymour Rothstein went up to him and told him, "Don't make any identification," or something, you know, to that effect, and he said, "No, no, I won't get involved."

THE COURT: Well, who is Seymour Rothstein?

MR. MEYERSON: Well, he's trying -- there have been a lot of questions here about Seymour Rothstein, thatthere is some sort of trap --

THE COURT: There is no evidence yet that Seymour Rothstein was speaking with the defendant's authority.

MR. MEYERSON: It does --

MR. BOBICK: Are you going to produce Seymour Rothstein?

MR. MEYERSON: No.

MR. BOBICK: Well, then I object.

MR. MEYERSON: You said you wanted --

THE COURT: Look, you have --

MR. MEYERSON: -- on opening he said that this was an entrapment and that Seymour Rothstein --

MR. MEYERSON: I never mentioned --

MR. BOBICK: I never mentioned Seymour Rothstein and I never --

THE COURT: You asked a number of questions about Seymour Rothstein, and there is no evidence that Seymour Rothstein is acting on the defendant's behalf.

MR. MEYERSON: Would it matter as to whose behalf if it wentto a state of mind as to who --

THE COURT: It's too prejudicial to tie this defendant in with some threats without a proof that they were made on your behalf.

MR. BOBICK: She wasn't present at the time. It strictly is --

MR. MEYERSON: Then let's not have any --

MR. BOBICK: Don't tell me what I can have, please.

MR. MEYERSON: If this is going to come out on cross I would like to have it on direct, your Honor.

It's not fair.

THE COURT: Maybe it's not fair, but I am not going to let you do it on the present state of the record.

(End of discussion at the sidebar.)

Q I will only ask you one more question, Mr. Rosen: Can you identify -- can you identify Mary Grannum in Court today without any reliance on any line-up or anything else? Just from your memory today?

A Yes, I can.

Q And is that the same woman as you picked out before, the defendant?

A Yes.

Q Are you absolutely sure?

A I am 100% sure.

MR. MEYERSON: I have no further questions.

THE COURT: All right, you may proceed on cross-examination, Mr. Bobick.

MR. BOBICK: Thank you, your Honor.

(Continued on the next page.)

CROSS EXAMINATION

BY MR. BOBICK:

Q Mr. Rosen, my name is Bobick, B-o-b-i-c-k, I am an attorney for the defendant Constance Rogers. We met each other yesterday, did we not?

A Yes, we did.

Q And as a matter of fact, I saw you last night on the way home in the sumway.

A True.

Q I didn't talk with you, did I?

A Right.

Q You were talking to Mr. Sullivan, right?

A Correct.

Q Mr. Sullivan had just finished testifying here, is that right?

A Correct.

Q Did Mr. Sullivan talk to you about what he testified?

A Not one word.

Q I didn't say a word to you either, did I?

A No.

Q Mr. Rosen, how many times, not counting in the Court, did you see Constance Rogers, known to you as Mary Grannum?

A Three times.

Q You're absolutely positive?

A Might have been four.

Q All right, when were the three times, when were the four times?

A She might have been in the branch before cashing tickets.

Q Before April second?

A Might have been after April second, to the best of my recollection.

Q Well, let's see, April second she was in, is that right?

A Yes.

Q April third was she in?

A I do remember the two distinct payouts on the checks. There are other times that come and go where a person can cash a ticket and there won't be a tax for them where I just might see her in a branch, but I have nothing to do with her except to see --

Q Nothing noticeable --

A Except to say hello maybe.

Q Nothing noticeable about her?

A No, nothing.

Q You have no special instance at all or

recollection at all about any other times except these two times?

A Correct.

Q And the fourth time you referred to is the line-up?

A The line-up.

Q By the way, in the line-up did you happen to -- when you picked the wrong one, what number did you pick?

A Number three, I believe.

Q Number three. And in your conversation with Mr. Sullivan did you tell him "We're going to pick the wrong one, let's pick number three?"

A No.

Q I see. And when you said you had a long talk about being a good American citizen after your statement on the line-up, did you include that in your talk your talk with the FBI?

A Do you want to repeat that question?

Q You remember you told us before you had a long talk and you decided to be a good American citizen and you decided to tell what happened.

A Correct.

Q Is that correct?

A Yes.

Q Now, was part of that long talk with the FBI?

A Yes, it was.

Q And at that time of the long talk did the FBI say something to you, the gist of "You picked the wrong girl, she's a Federal FBI employee, and we're going to put you before the Grand Jury and if you lie before the Grand Jury you're going to jail for perjury?" Question mark?

THE COURT: That was a question, did the FBI say that to you or something like it?

THE WITNESS: It's possible.

THE COURT: No, what's your best recollection.

THE WITNESS: My recollection is they might have.

Q All right, so that when the FBI said to you you picked the wrong girl, you are going to jail for perjury, then you decided to become a good American citizen and tell on Miss Rogers, is that correct?

MR. MEYERSON: Your Honor, he said it was his best recollection that he might have. Now he's asking further questions assuming it's a fact. He doesn't remember when -- doesn't remember whether he said it or not.

THE COURT: I think his question was a little

different from the last one.

Q Well, let's see, you remember her very clearly though, from the payout, right?

A Correct.

Q You remember paying her off, do you?

A Correct.

Q You remember how you paid her off, cash or check?

A Check.

Q And you remember writing a check for $18,000?

A Yes.

Q No question in your mind about it, you wrote a check for $18,000 and handed it to her and said, "Here it is?"

A I will state to the best of my recollection I wrote checks.

Q And you wrote the check for $37,000 too?

A To the best --

MR. MEYERSON: Your Honor, I'm sorry, he said checks.

MR. BOBICK: Your Honor, I am in cross-examination. I object to the interruption.

It's uncalled for.

THE COURT: You are perfectly correct.

Mr. Meyerson has no right to coach the witness during

his cross-examination.

Please be seated. Make proper objections only.

BY MR. BOBICK:

Q Now, do you remember writing the $37,000 worth of checks?

A Checks?

Q Checks, checks.

A Right.

Q Well, --

A To the best of my recollection I wrote the checks. However, I might have had my other shift manager write checks.

Q I see. Now, do you remember being asked -- by the way, on the first day, April second, did you write one check or more?

A It has to be more than one because we only write one check for $10,000 maximum.

Q Well, do you remember being asked this question under oath?

"Question: Do you remember writing the check?

"Answer: I remember writing the check for $18,000."

Were you asked that question and did you give that answer?

A If I had given the ansewr it was an incorrect

answer.

Q I see.

A Because we are -- we cannot write more than one check for $10,000.

Q And do you remember being asked this question:

"Question: Do you remember writing a check for $37,000?

"Answer: I cannot remember. I might have."

A If you asked me that question, Mr. Bobick, about the check, I answered you in your own language, because you asked about a check.

Q Well, Mr. Rosen, did you talk to anybody about this case?

A Today?

Q Today.

A No.

Q Didn't talk to Mr. Meyerson at all?

A I spoke to Mr. Meyerson this morning.

Q Anything about checks?

A No.

Q Did you talk to anybody last night?

A Except my wife.

Q And Mr. Sullivan?

A Yes, I spoke to Mr. Sullivan on the way home,

but not anything to do with the case.

Q Did you talk to anybody about this case?

A No.

Q Now, did you see this defendant with anybody else in the OTB office?

A I saw her say hello once.

Q To who?

A To a Mr. Seymour Rothstein, I believe.

Q I see. Just on one occasion?

A Just on one occasion.

Q And you just saw him say hello?

A Yes.

Q Did he seem to know her very well?

A No.

Q He didn't seem to know her very well? And did you see her say hello to anybody else?

A No.

Q So that actually you never really noticed her at all except on the April second or April fourth. Well, on this occasion that you saw her with Mr. Seymour Rothstein, when she said hello, was that April second or April fourth?

A I can't recollect the exact date.

Q Well, it was on one of the days that she came in for the payoff.

A Right. Well, it might have been.

Q It might be. Did you ever see her talk to anybody else?

A Not to my recollection.

Q And your recollection as you sit here today is that she was not very friendly with Mr. Rothstein?

A All I saw was just a nod of the head, hello, and that was it.

Q And that was it. Well, did you ever talk to -- by the way, do you know that fellow at the counsel table next to Mr. Meyerson?

A Yes, I know.

Q Who is he?

A He's an FBI agent.

Q Do you know his name?

A Nick Gianturco.

Q And did you ever talk to Mr. Gianturco on any other occasion about this case?

A Yes.

Q On many occasions?

A No.

Q When was the first time you spoke to him?

A When he asked about big payoffs in the branch.

Q When, do you remember that?

A I think it must have been about after April.

Q After April?

A Yes, when the Superfecta thing broke.

Q How long after April?

A I can't recollect to the best of my knowledge.

Q What?

A I can't recollect it.

Q Well, let's see, you had a big payoff on April fourth, $37,000.

A I also had big payoffs at Monticello which was before that date.

Q Well, let's talk about April fourth. On April fourth you paid off $37,000 to a person. ANy question about that?

A No.

Q That was a pretty big payoff. Did you ever pay off more than that?

A Yes.

Q Many times?

A Quite a -- I -- a few times.

Q Quite a few times. And how soon after you paid off $37,000 to Miss Rodgers on April fourth did you first meet the FBI agents?

A I can't recollect the exact dates.

Q The next day?

A I can't recollect the exact date.

Q A month later?

A I can't recollect the exact date.

Q Well, you remember her pretty well, don't you?

A Yes.

Q What? And you get visited by the FBI all the time?

A No.

Q Was this the first -- Mr. Meyerson -- is this the first time that you ever had a visit from the FBI?

A At that time, yes.

Q So this was the first time that the FBI agent visited you and you don't remember the --

MR. MEYERSON: Your Honor, what date is he talking about? First he's saying I don't remember, and then he's saying "This date."

THE COURT: All right, objection sustained.

Q The first time you met Mr. Gianturco was the first visit you ever had from an FBI agent?

A Correct.

Q Is there any question about that?

A There is a question.

Q What's the question?

A The question is that one time there was a guy

who got a big payoff in the store and I remember I reported it or I had a conversation with our security head and whether an FBI agent was present, I can't recollect to the best of my --

Q Was that before or after April second?

A I cann't recollect the exact date.

THE COURT: All right, we're going to have to take a recess now. The jury go back to the jury room now and please don't talk about the case. So you will have about fifteen minutes probably, before we start again.

If anybody wants to make a phone call or get some coffee, you may. Don't talk to anybody in the Courtroom at all.

I just want to talk to counsel a minute before I go.

You can step down.

(Jury left the Courtroom.)

THE COURT: Mr. Meyerson.

(Continued on the next page.)

MR. BOBICK: Your Honor -- Mr. Rosen -- Your Honor, would the Court admonish Mr. Rosen not to discuss his testimony or discuss this case with anybody during this recess?

THE COURT: Mr. Rosen, if you talk with anybody during the recess, Mr. Bobick may ask you about it.

THE WITNESS: Absolutely.

THE COURT: I am going down for a nationalization ceremony. If you want to get the checkbooks --

MR. MEYERSON: We have called for them, your Honor.

THE COURT: -- you can do it. Make your call now. And you asked if Mrs. Friedman is going to be available. Do you want to have her back?

MR. BOBICK: Oh, yes, definitely.

And you have Phillip Nelson.

MR. MEYERSON: Yes.

MR. BOBICK: So then we're all set. We are ready to keep on going.

THE COURT: All right, I'm not sure whether the Rothstein conversation is now admissible or not. I am going to reflect on that in the interim.

MR. BOBICK: It's all right, Judge.

(Recess taken.)

(After the recess.)

THE COURT: All right, Mr. Bobick, you may continue with the cross-examination of Mr. Rosen.

MR. ROSEN: Your Honor, may we have the last question please?

(Record read.)

BY MR. BOBICK:

Q So, Mr. Rosen, to go back, when Mr. Gianturco, --when Mr. Gianturco -- when Mr. Gianturco came to see you he interviewed you personally.

A Well, how do you mean by personally? Was there -- alone?

Q Yes.

A I think that's the way it was.

Q Well, do you have any recollection?

A To the best of my recollection it was alone.

Q And did he ask you about large payouts?

A Yes.

Q And did you mention to him the payout of $37,000?

A To the best of my recollection I cannot recall if I had mentioned that or if I had mentioned him or none.

Q I see. Well, sir, let's go back to April second, sir. Would you tell us exactly what happened on that day, relating only to the transaction involving the $18,000?

A My cashier that day called me that he had a large payout.

Q Now, when he called you -- I'm sorry to interrupt you, but when he called you were you in the back back?

A I could have been in the back back or I could have been up front. I can't remember exactly where I was.

Q You have no recollection?

A I have no recollection of where I was.

Q But you -- do you remember how he called you?

A Yes, he called me by name.

Q He just yelled Sam?

A Right.

Q Did he ring a bell?

A No, there were no bells.

Q There were no bells? There were bells for the --

A There were buzzers.

Q I'm sorry, did he ring a buzzer?

A No, generally he just hollered.

Q Well, generally we're not interested in, Mr. Rosen. We're just interested in April second. Can you remember April second?

A I think he hollered.

Q You imagine?

A To the best of my recollection he hollered Sam.

Q I see. And then what happened?

A Then I -- I -- to the best of my recollection I went over, I got the tickets with the ID, the social security and the driver's license with the name of Mary D. Grannem on it, and a social security card with the name Mary D. Grannum on it, I went into my area where I have my check writer, my 1099 forms, and I filled out the proper forms and checks.

I went back, I gave my cashier the checks to look at and see if it was correct. I went over to the empty window, I called the person who -- by the name of Mary D. Grannum over to sign her 1099 form. She signed her 1099 form.

Now, whether I handed her the checks or whether my cashier handed her the checks I can't -- I can't exactly recollect. I might have handed her the checks.

Q And then what happened, sir?

A She either went up to the bank herself or I even escorted her up to the bank, to the best of my --

Q Do you remember whether you escorted her?

A To the best of my recollection I could have escorted her up to the bank with the checks.

Q This is April second. You remember the woman, you remember the checks, you remember the cashier calling "Hey, Sam." Do you remember going to the bank with her?

A To the best of my recollection, I would say I went to the bank.

Q Okay. Now, did you have any other payouts that day that required the 1099 form or required a trip to the bank?

A To the best of my recollection we very well could have had.

Q Well, sir, do you remember having such a transaction?

A I cannot remember precisely whether I had. One particular incident I had that day -- I remember it. The party is here.

You show me whoever else cashed big that day and I will answer you affirmatively or no.

Q All right, did Seymour Rothstein -- was he there that day?

A Possibly.

Q Well, do you remember?

A To the best of my recollection I don't remember if it was that date.

Q Well, sir, that is the day that you saw

Seymour Rothstein nod to this defendant?

A To the best of my recollection I don't remember if it was that date.

Q If it wasn't that date, what other date would it be, sir?

A I can't remember, --

Q Do you remember --

A -- Mr. Bobick, exactly what date.

Q Do you remember --

A I remember the particular incident.

Q It was just a nod?

A Just a nod.

Q You remember that clearly?

A Very -- yes, because I do remember that clearly.

Q You remember that very clearly?

A Not very clearly. I remember it.

Q But you remember it enough to say it's a fact and that you want us to believe it?

A I'm -- I wouldn't be remembering it or I wouldn't be saying it if it wasn't a fact.

Q Could it have been more than a nod?

A It very well could have. I don't watch him constantly. I just remember the nod of hello.

Q The nod. Well, besides Seymour Rothstein on

this day, whichever day it was, was there anybody else in the OTB office that was friendly to her?

A There very well might have been.

Q Do you remember?

A To the best of my knowledge I cannot remember.

Q Okay. And besides her, was Seymour Rothstein nodding to anybody else?

A I did not see him nod to anybody else.

Q All right, did you see him friendly with anybody else?

A I did not see him friendly with anybody else. I just caught a -- just a nod.

Q Just a nod?

A -- from Seymour Rothstein to Mary Grannum.

Q And that's the truth, isn't it?

A That's the truth.

Q Sure. On -- well, and you don't remember whether you went to the bank or not with them?

A I can't recollect to the best of my recollection.

Q How about on the fourth, did you go to the bank on the fourth with her?

A I have -- I very well could. We believe in very good customer service in 1501.

Q And --

A We don't like big -- big payouts to be waiting. And it's part of our policy.

Q How long did it take while this was all happening?

A I just get the okay from our -- the -- the vice-president or whoever is in charge of the bank, and that's it. I hand it over to whoever gets the checks and they collect --

Q What is your best recollection as to the length of time involved from the time that the cashier called you until the time you said goodbye at the door, or wherever you said goodbye?

A I would say the whole transaction takes about twenty minutes.

Q Twenty minutes at the outside, a big hit you wouldn't want to keep her an hour, would you?

A No reason to.

Q You wouldn't want to keep her an hour and a half, would you?

A You have no reason to.

Q No reason to. Well, when the cashier called you on April second, were the tickets given to you as they were handed to him, or were they already stamped with the

machine?

A They were stamped with the machine.

Q And on April fourth would the situation be the same?

A I think it was.

Q Well, on April fifth do you remember having an interview with Agent Gianturco?

A I can't --

Q Gianturco, I'm sorry.

A I can't remember that date exactly.

(Continued on the next page.)

Q And do you remember telling him about Mr. Seymour Rothstein being in the premises when Mary Grannum was there?

A I can't remember that exactly.

Q Well, if you told him something, would you tell him the truth?

A Of course.

Q You would have no reason to lie to the FBI, would you?

A No.

Q No. So did you tell him that Rothstein knew both females very well and was talking and joking with both of them?

A What do you mean by both of them? We're talking about one.

Q Well, did you tell him that with the one Rothstein was talking and joking?

A I can't remember that particular incident. I might have reported it that --

Q Well, did you tell him that Mary -- that Mary was joking with Seymour Rothstein?

A I don't recall them joking. I just remember a nod.

Q Well, how about a person by the name of

Michelle Graziano?

A I remember Michelle Graziano.

Q And what day was Michelle Graziano at that --

A She might have been in that day, too.

Q What day?

A The same day that Mary Grannum came in.

Q What date?

A WHatever day it was. It might have been April second.

Q It might have been?

A Or April fourth, or some other date that Mary might have been in the branch.

Q Well, was Mary Grannum in on April second?

A To the best of my recollection she was because I signed her 1099 form.

Q And --

A And that's the party.

Q And did you think it was surprising that here she was back a day and -- two days later on April the fourth?

A I was very surprised, yes.

Q You were very surprised. That's two days in a row -- I mean two days separating.

A I said that's a phenomenal streak of luck.

Q That's a phenomenal streak of luck, do you

remember saying that?

A No, I don't remember saying that. Just a phrase I'm just using now.

Q Oh, I see. So you didn't say that to anybody?

A No.

Q Well, how about the day in between, April third, did you see her?

Q It's very possible I might have. I can't recollect whether I saw her or not, whether I handled that particular transaction. That's a long time ago.

Q It was a long time ago, but you remember very clearly -- well --

A I don't remember very clearly. You are asking me about --

THE COURT: Just answer questions, please.

Q On April third -- on April the fifth when you spoke to the FBI agent, did you tell him that Mary Grannum was there on April the third?

MR. MEYERSON: Your Honor, he stated --

THE COURT: Yes, objection sustained as to form.

Q Did you tell Agent Gianturco on April the fifth that Mary Grannum, Michelle Graziano and Seymour Rothstein were there on April the third?

MR. MEYERSON: Your Honor, he has already

stated a number of times he didn't remember what he said. Now counsel is assuming facts that -- that the witness has stated that are not so, and keeps going.

THE COURT: He's asking a question -- he's asking a question. Objection overruled. Read the question, Mr. Lewis.

(Question read.)

THE WITNESS: To the best of my recollection I do not remember the date that I spoke to Mr. Gianturco about that particular incident.

Q Well, did you tell Mr. Gianturco, whatever date it was, that two days before Mary Grannum, Michelle Graziano and Seymour Rothstein were in the OTB?

A At sometime, but what particular date I cannot recollect.

Q Did you tell him, sir, that two days before you spoke to him that Michelle Graziano and Seymour Rothstein were in the --

A I remember an incident of telling my security --

Q Sir?

A -- department --

MR. BOBICK: I move to strike out as not being responsive.

THE COURT: Overruled. Overruled.

Go ahead with your answer.

THE WITNESS: I remember telling my security department that -- Or Mr. Gianturco, or the security department of my Off Track Betting and Mr. Gianturco, that they all knew one another. I assume that they knew one another because of the little nods between them.

Q Oh, there were more than one nod then?

A No, I remember the one nod between Seymour Rothstein and Mary D. Grannum.

Q And did you tell Agent Gianturco that Rothstein knew both femals very well, and was talking and joking with both of them?

A I might have said it. I cannot recollect the exact incident or the exact words that I might have used at that time.

Q Well, if you said it was it true?

A If I said it it certainly was true.

Q Well, are you telling us now that there was joking and talking between Mary Grannum and Seymour Rothstein?

A I am telling you that I cannot remember at this particular moment that incident.

Q But you do remember the nod, just the casual nod?

A Right.

Q I see. Now, Mr. Rosen, did you go to the bank on April fourth with Mary -- with Michelle Graziano?

A I might have gone with her.

Q Is there any way that you would know?

A If I saw the bank pictures on that day I would know exactly.

Q You mean there are pictures of the people in the bank cashing checks?

A Well, I assume the cameras are in a bank.

Q Sir, do you know whether or not there are pictures showing the people in the bank with you cashing the checks and the dates are there?

A I do not know of any pictures.

Q Now, did you go to the bank on whatever day you said you went to the bank with Mary Grannum, Michelle Graziano and Seymour Rothstein?

A Are you speaking did I go to the bank with all three?

Q During one day?

A It's very possible that I could have.

Q Do you remember what day that was?

A The exact date I cannot recollect. The exact date I cannot recollect.

Q Now, sir, go back to the identification. Did you tell us everything that the FBI told you after you identified the wrong person?

A To the best of my knowledge I have.

Q Sir, is it not a fact -- I show you Defendant's -- I mean People's, Government's Exhibit number two -- that you identified as Mary Grannum, number three.

A Correct.

Q And you didn't make up with Michael Sullivan -- Michael Sullivan that he was going to pick out number three.

A Correct.

MR. BOBICK: At this time, your Honor, I would like the jury to see Government's Exhibit 2, calling attention to number three.

THE COURT: All right, I think it's been around once before, but they can look at it again. Continue with your questions unless some juror raises a hand and wants you to stop.

MR. BOBICK: Now, your Honor, has the Court changed its ruling on the sidebar conversation we had before?

THE COURT: Well, I may permit questioning on it, yes.

MR. BOBICK: You will permit questioning on it?

THE COURT: Yes.

Q Now, prior to your going down to the identification --

MR. BOBICK: May we have a sidebar conference?

THE COURT: All right.

(Discussion at the sidebar.)

MR. BOBICK: Are you going to ask him -- I don't know if I have opened the door for you.

THE COURT: I think you have opened the door for Mr. Meyerson, but I don't know if he wants to walk in. Do you want to walk in?

MR. MEYERSON: Yes.

MR. BOBICK: All right, then suppose I let you walk in and come back on.

THE COURT: All right.

(End of discussion sidebar.)

BY MR. BOBICK:

Q Would you tell us, sir, what conversation you had with Mr. Sullivan before you went down to the line-up?

A The exact conversation I cannot recall, but we did -- I do remember saying I am going to pick out the wrong girl because I don't want to become involved in this case.

case.

MR. BOBICK: And that's what you told him?

THE WITNESS: Right.

MR. BOBICK: I have no further questions at this time.

THE COURT: All right, any redirect?

REDIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Rosen, what's the average amount of money that you usually pay out to one individual?

A The average amount we pay out to one individual would be a small amount, five dollars, fifty dollars, one hundred fifty would be a lot.

Q So would you -- was $18,037 an unusual amount to you?

A Very unusual amount.

Q Now, prior to the line-up, did you have a conversation with a man named Seymour Rothstein?

A I did.

Q And what was the nature of that conversation?

A To the best of my recollection Seymour Rothstein offered me any amount of money that I would ask for if I refused to identify a certain broad.

Q And do you know which woman he was referring

to?

A I -- to the best of my recollection I think it is Mary Grannum.

Q Well, what was your response?

A My response was I said "Leave me alone, I don't want to bother with this thing," and I reported it.

Q Whom did you report it to?

A To my security department.

Q And later to the FBI?

A Later to the FBI, yes.

Q And was that one of the factors -- I'm sorry, that's not necessary. No further questions.

RECROSS EXAMINATION

BY MR. BOBICK:

Q Now, Mr. Rosen, did you report it to the FBI immediately after Mr. Rothstein told you?

A I reported it immediately to my investigation department.

Q Whom did you report it to?

A I'm trying to think of his name. Just give me a minute. It's on the tip of my tongue, but it doesn't want to come out.

I -- I know the gentleman very well. The name just eludes me at this present moment.

Q Well, what day did you report it?

A The day the bribe was offered.

Q What day?

A The day the bribe was offered.

Q What day?

A I cannot recollect the exact day.

Q What month?

A I cannot recollect the exact month.

Q What year?

A The year 1973.

Q Now, do you remember wher you went down to the FBI headquarters?

A I do.

Q When did you go down?

A The day I was called to come down.

Q What day were you called?

A I can't recall the exact date.

Q Do you remember what month?

A I can't recall the exact month.

Q Do you remember what year?

A 1973.

Q Now, when you went down to FBI headquarters did you tell them before you went down there about the bribe?

A I assumed they had --

Q No, sir, did you tell them --

A To the best of my recollection I -- I didn't tell them a thing except to the best of my recollection that after I reported it to my security department I had a talk with Mr. Gianturco about the bribe offer.

Q Was that after you identified the wrong person or before?

A To the best of my recollection it was before.

Q You told Mr. Gianturco about the bribe that you were going to pick out the wrong person before you had identified her?

A I never told Mr. Gianturco I was picking out the wrong person.

The reason I picked out the wrong person was because of physical -- the height was the same, the coloring was the same, and that's the only reason I picked out the wrong person. And the reason I picked out the wrong person was I did not want to be involved -- the way I am now.

Q You mean that you couldn't identify the girl?

A Pardon?

Q You couldn't identify the girl?

A Which girl are you speaking of?

Q The girl that you were going to identify when you picked out the wrong one?

A I never knew which girl I was going to pick out until I got to the line-up, sir.

Q And when you got to the line-up you picked out the wrong girl?

A I picked out the wrong girl because the physical height, the coloring was the same as Mary D. Grannum.

Q And this was the reason, because you didn't want to get involved?

A Right.

Q And this was after you told the agents that you were bribed to pick out the wrong girl?

A I was never bribed, sir.

Q Well, this was after you told the agents that you were offered a bribe?

A That it -- I said to the best of my recollection it was before --

Q I see.

A -- I was offered the bribe before I went to the line-up.

MR. BOBICK: Your Honor, at this time I ask for the FBI report which would indicate this conversation. I haven't received it yet.

MR. MEYERSON: I have turned over all 302's. Mr. Gianturco will take the stand and testify as to

exactly what happened.

THE COURT: All right.

BY MR. BOBICK:

Q When did you have the conversation with the FBI concerning the offer of the bribe?

A The exact date I can't remember.

Q And was the offer of the bribe after the identification or before?

A To the best of my recollection I think it was before the line-up.

Q Before the line-up? When you say before you mean in the morning, the day before, the week before, a month before?

A To the best of my recollection I can't remember the precise time, whether it was the morning, the afternoon, the night, the month before, the day before or a week before.

Q Well, after you went into the room where you looked through the window and you saw the line-up, at that point -- and did you walk out of the room?

A After I made my identification?

Q Yes.

A Yes, I did.

Q Did you go home?

A Yes, I did.

Q And at that point --

MR. MEYERSON: Your Honor, excuse me, we have covered all this on cross. Now, this is recross. I think it's improper --

THE COURT: Well, I will let him continue for a brief time.

Q And did you come back to FBI headquarters the same day?

A Same day.

Q The same day. So that when you had your conversation with Mr. Gianturco you had two conversations, one when you told him about the bribe and one when you came down and told him you picked out the wrong --

A As I reported to you before, I do not remember the exact date I reported the bribe, whether it was the same day as the line-up or a week, a month, or two months before.

Q Well, is that your testimony?

A Yes.

Q And you're telling us -- and you remember this -- that you told the FBI about he offered to bribe you for the wrong identification before you made the identification?

A I -- you are saying I was offered a bribe for the wrong identification? I was offered a bribe to forget anything I knew. That was the extent of the bribe.

THE COURT: Mr. Bobick wants to know whether you are sure that that was reported to Mr. Gianturco before or after the line-up?

THE WITNESS: It was -- I had a conversation with Mr. Gianturco to the best of my recollection, your Honor, I cannot -- to the best of my recollection it was before the line-up. It might have been after.

Q It might have been after the line-up?

A It might have been.

Q I see. And you don't remember the date when this alleged bribe was made, offered to you?

A No, I -- the exact date I do not remember.

Q Did anybody tell you to try and follow it up and see whether or not you could get him making the bribe?

A No.

Q Did anybody discuss with you the amount or was it just any amount?

A Any amount. You name the amount was the word used.

Q And Mr. Rothstein said that?

A Yes.

Q And this is the same Mr. Rothstein you said who was laughing and joking with Michelle Graziano?

A I never said he was laughing and joking. I remember the nod to Mary D. Grannum.

Q Well, did you ever say that he was joking and talking with both of them?

A I might have said that, yes.

Q Well, do you remember that?

A To the best of my recollection I can't remember that exact phrase.

Q You don't remember that. And you don't remember what date that was?

A No, I can't remember the exact date.

Q Well, do you remember the payoff that you made to Michelle Graziano?

A If I remember Michelle Graziano, she had more than one payoff.

Q She had more than one payoff? How many payoff's did she have, if you know?

A With me it might have been two.

MR. MEYERSON: Your Honor, again, going far beyond the scope of redirect. It's already been covered several times.

MR. BOBICK: Yes, I --

THE COURT: Well, haven't covered Michelle

Graziano fully, I guess. I will let Mr. Bobick inquire.

BY MR. BOBICK:

Q Did they ever show you a picture of Michelle Graziano?

A The FBI did not show me any pictures to my recollection except for one time.

Q What one time, sir?

A I think that was the time of the line-up, when I was looking through a folder that he had lying on the desk. On my own. They didn't--

Q You mean --

A They didn't show it to me. It was there and I was just briefing through it.

Q So that before you went to the line-up you loo[illegible] through a book of pictures?

A I did not say that, sir. I said that after the line-up I looked at a book of pictures that was lying on the desk.

Q After the line-up?

A Just out of sheer curiosity.

Q You mean that you walked into FBI headquarters and looked through papers out of sheer curiosity and nobody stopped you?

A No, there was no need to.

Q There was no need to. Do you know what else was in the book besides pictures?

A Just pictures.

Q Just pictures. Pictures of horses?

A No.

Q People?

A People.

Q Women?

A There were some women, some women, some men.

Q And did anybody give you that book and say just casually look through it?

A No.

Q -- And see if you know someone. It was just lying on the desk?

A Just lying on the desk.

Q And the agents were sitting around?

A There were no agents by me.

Q They left you without any agents and the stuff just lying on the desk?

A It's a very big office with a million desks.

Q By the way, when you came back to the FBI office on the day of the line-up, did you come down as a result of a request?

A Not a request. They wanted to see me.

Q They requested that they wanted to see you and when you got to 201 East 69th Street, were you stopped downstairs and inquired about how you wanted to see?

A Yes.

Q And isn't it a fact that you can't go upstairs u ın agent comes down and gets you?

A True.

Q And did this agent come down and get you?

A Yes.

Q Who came down and got you?

A I can't recall who it was.

(Continued on the next page.)

Q And then this agent took you upstairs?

A Correct.

Q And then what happened?

A Then what happened?

Q Yes.

A We were just having a nice friendly conversation.

Q You and the agent?

A Me and the agent.

Q Right, a friendly conversation about grand juries?

A No, about perjury.

Q About perjury, about going to jail for perjury?

A Correct.

Q And about putting you before the grand jury on -- and if you commit perjury before the grand jury you are going to jail?

A No, they never said that.

Q They never said that, you just had a nice --

A They just mentioned the fact that if you perjure yourself you are liable to go to jail.

Q That's what he said, that's a nice, friendly conversation. And then did he also say to you that you picked out an FBI employee?

A That was the time he said yes, I picked out an FBI employee.

Q And that therefore you picked out the wrong person?

A I picked out the wrong person.

Q And this was the nice, friendly conversation. And then the agent just walked away?

A That wasn't the incident with the photographs.

Q Well, that's what we're interested in is the photographs. How did you get --

THE COURT: All right, please Mr. Bobick, we don't want all your comments. Just ask questions.

Q How did you get to the photograph?

A This was after the line-up.

Q After the line-up.

A After the line-up and we were escorted into the large central office of the FBI with about 150 desks, with about five agents in the whole room. I just happened to sit down at a desk that was unoccupied with a folder of pictures and I was looking through the pictures.

Q Was the defendant Constance Rodgers' picture in that folder?

A No.

Q You didn't see that?

A No.

MR. BOBICK: I have no further questions.

THE COURT: All right, anything more?

FURTHER REDIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Rosen, was it ever suggested to you which number to pick out in the line-up?

A It was never suggested to me which number to pick out. We never discussed who we were going to pick out. I just happened to pick this girl because her physical features matched that of Mary Rodgers, the height, the wei ght, at that time the lighting.

Q Did you know Mary Grannum the whole while you were watching -- when you saw the line-up, did you recognize Mary Grannum --

A Yes.

Q -- immediately?

A Yes.

Q And afterwards when you subsequently had picked her out with the FBI at that time did they suggest which person you should pick out?

A No.

Q You were simply shown the line-up and you picked out number 6?

A Without any question.

Q And you recognize that person here today as the defendant?

A I do.

Q Without any shade of a doubt?

A Without any shade of a doubt.

MR. BOBICK: Just one question.

Q Is Mr. Rothstein in that room with you, in the witness room?

A Yes.

Q And has he been in the room with you yesterday?

A Yes.

Q And today?

And today.

THE COURT: All right, you can step down.

Next?

(Witness excused.)

(Continued on the next page.)

N I C H O L A S D. G I A N T U R C O , having been called as a witness, took the stand and was duly sworn by the Clerk of the Court, testified as follows:

MR. BOBICK: Your Honor, before the questioning of this witness commences I think that the fact should be brought out to the Jury that the witness was present during the entire trial --

THE COURT: It doesn't need -- have to be brought out to the jury, but you may state it for the record.

MR. BOBICK: Yes.

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Well, to clear one thing up first, you were in the Courtroom yesterday when Mr. Bobick asked for Mr. Rothstein, is that correct, to appear today?

A Was I here?

Q When Mr. Bobick asked for Mr. Rothstein were you -- were you present?

A I don't believe I was at that point.

Q When I asked -- you remember me asking you to get Mr. Rothstein and put him in th e witness room?

A No.

Q -- So he would be available?

A No.

MR. BOBICK: Your Honor, I object of this attempt to the U.S. Attorney leading the witness and I certainly object to him trying to impeach the witness.

THE COURT: All right, the Jury please disregard the comment.

Go ahead, Mr. Meyerson.

Q Mr. Gianturco, how long have you been with the FBI?

A Five years.

Q And did there come a time when you went to the defendant's home?

A Yes.

Q And could you tell us the address she was living at?

A Yes, I would like to refer to the notes that we made at the time. It was to serve a subpoena to the defendant Constance Rodgers and it was on May 8th, 1973, myself and another agent, Thomas R. French.

We served Constance Rodgers at 97-11 Horace Harding Place, apartment 4B out in Queens, with a subpoena.

Q And that's where she was living at the time?

A Yes, sir.

Q And what's the name of the name plate of the door?

A Downstairs -- I think it's under Rodgers. It's not on here. I didn't make a notation. It might be wrong though.

Q Now, did you have a conversation with her ahead of time?

A Yes, we did, we --

Q Would you tell us the nature of that conversation?

A We -- we served Mrs. Rodgers with a subpoena at the time and we asked her if she had seen Forest Gerry, as we were trying to also serve him.

She stated that she had not seen him in two to three weeks, and she didn't know when she would see him again. She also stated that she didn't know why she was being subpoenaed as she only cashed one Superfecta ticket and that was at Yonkers Raceway.

Q Only one Superfecta ticket?

A Yes, sir.

Q And only at Yonkers Raceway?

A That's what she said.

Q You are the agent in charge of overseeing the line-up the defendant was present at?

A Yes, sir.

Q Could you tell us the precautions you took to make sure that every --

THE COURT: No, tell them what he did.

Q Could you tell us what you did at that time to oversee the line-up?

A Yes, sir, we had the witnesses come to the FBI building at 69th and Third and there were, I believe, three of them.

At the time we had -- we -- as they came in we just asked each and everyone to -- not to discuss any part of this until -- the line-up was over. When Mr. Bobick and -- and Mrs. Rodgers arrived we had one agent with each witness. We had them bring them upstairs and stay with them and get their statements at the end of the line-up.

Mr. Bobick and Mrs. Rodgers came upstairs and I believe we had eight or nine girls. We tried to get them all the same height, hair coloring and age if we could, and at that time Mr. Bobick used six of the seven of the eight girls --

Q Let me ask you something about that.

In other words, Mr. Bobick was given a choice of which girls would be in the line-up?

A Yes, sir. The line-up was held where each

individual in the line-up held a card. At the end of having each witness look at it, Mr. Bobick had the choice of changing around any of the people or leaving Mrs. Rodgers out of the line-up or any of the other options.

At that time the line-up was over, the -- each witness went down with an FBI agent and a statement was taken from him. I believe it was a very short statement saying who they picked out. Et cetera.

Q Now we had some testimony here about a conversation between Mr. Rothstein and Mr. Rosen. Was that reported to you by Mr. Rosen?

A Yes, sir, it was reported to me approximately two months before the line-up took place, and I believe at this point -- the reason it wasn't written down, we didn't make a recording of it on any of our form 302's, at this point we didn't know who Mary Grannum was, and I didn't go down to OTB specifically to interview Mr. Rosen, I was up there talking to Ed Lent, who was in charge of security, and during that time he said Sam Rosen was in charge of the downstairs branch. "I probably should tell you something, he told me something a little earlier," in which he -- Mr. Rosen come up, he reported that -- at that time he didn't even know it was Seymour Rothstein, I don't believe. Well, we may have -- he said, "The cab

driver come up to me and he told me that if I forgot everything I knew and not to identify the girl that I could name my own price," or something to that effect.

Q And did you tell him anything to do?

A I told him that if Rothstein or the -- or Mrs. Rodgers did come back or anyone made contact with him either on the phone at home or at the office, to immediately call us or to call Mr. Lent, the head of security.

Q I show you Government's Exhibit 1, which has an address of 95-13 Horace Harding Expressway. Was a check made on that address to determine whether such an address exists?

A Yes, sir, an agent by the name of Tom French was out there this morning.

MR. BOBICK: Objection to what some other agent is going to tell him.

THE COURT: Overruled.

THE WITNESS: We called the agent. Agent French is on his way in and he -- he hasn't got back in yet, but he called us and stated that there is no such address as 95-13 Horace Harding, that the Post Office doesn't have it, either does Lefrak City, and also that the defendant, Mrs. Rodgers, has

has been living at 97-11, apartment 4F for, I think, well over a year.

MR. MEYERSON: Thank you.

MR. BOBICK: Are you finished?

MR. MEYERSON: Yes.

CROSS EXAMINATION

BY MR. BOBICK:

Q Agent, did they tell you that Miss Rodgers lived there four years?

A I said it was well over a year. It could have been four years. I --

Q Could have been four years. And is it not, that address, 97 what --

A -- 11 Horace Harding Boulevard.

Q Wha is that address there?

A This is 95-13 Horace Harding Expressway.

Q 95-13 ?

A YEs.

Q You didn't see that when that was written, did you?

A I didn't see what when it was written.

Q When that 1099 was written?

A You mean did I know that Annette Lehman's address was different?

Q Did you -- did you know when that when that was written, were you there when it was written?

A No.

Q Do you know?

A I don't think so.

Q Do you know where the information was copied from?

A Do I -- do I know?

Q Yes.

A. Identification must have been given to the Clerk.

Q I see, and it must have been copied, do you know?

A Right.

Q And whether or not that was the address on the identification you don't know that either?

A I have no idea.

Q You just know what was there?

A I know this address here.

Q Is that right? Now, did you inquire about about a Michelle Graziano?

A With who?

Q With Rosen, Sam Rosen.

A I believe that when I talked to Mr. Rosen

he mentioned that Michelle Graziano, who at that time was known as a very big cashier of Superfecta, was in his branch several days prior to the time I talked to him.

Q And did youmake a report?

A I believe I mentioned -- I wrote on the 302.

Q And when Mr. Rosen spoke to you about the girl did he mention Grannum or anybody when he told you about the alleged bribe?

A As far as the alleged bribe, I believe that he mentioned -- he either mentioned Mary Grannum's name or he mentioned the female that is with Seymour Rothstein.

Q I see, and isn't it a fact that on April the ninth, when you typed up your interview of April four, you concentrated on Michelle Graziano, who was friendly with Seymour Rothstein?

A I'd have to read it.

MR. MEYERSON: Your Honor --

Q Well, would you read it and see whether or not it refreshes your recollection that the three-page report concerned one Michelle Graziano?

A Yes, sir, it's basically about Michelle Graziano.

Q And isn't it a fact that it says there that

Michelle Graziano and Seymour Rothstein were friendly?

A It says that "Rothstein knew both females well and was talking and joking with both of them."

Q Right, and does it say that Michelle Graziano knew Seymour Rothstein?

MR. MEYERSON: Could I ask the relevancy of this?

THE COURT: I didn't hear what you said.

MR. BOBICK: Excuse me?

THE COURT: But I think sooner or later this document ought to be marked for identification.

MR. BOBICK: Yes, your Honor, I offer it for identification.

THE COURT: What was the question again please?

Q Does it show that Michelle -- will you read the question back please?

(Question read.)

A I don't believe it shows that. It just says that Seymour Rothstein was joking with both females. It doesn't say that Seymour Rothstein knew Michelle Graziano.

THE CLERK: Three-page report marked for identification Defendant's B.

(So marked.)

Q Now, do you know the date of the interview

that you had with Mr. Rosen?

A This is the one that we didn't -- this one here?

Q Yes, sir.

A Offhand, no. I would say it's approximately -- I can tell you approximately: It's the month of April.

Q Well, look at it, sir.

A It was on April fifth.

Q Now, did Sam Rosen on April fifth tell you that Mary Grannum cashed $37,000 worth of winning checks -- winning tickets?

A Off the top of my head I would have to say no. I would have to refresh my --

Q I'm sorry, would you refresh your recollection?

MR. MEYERSON: Your Honor, is counsel only referring to this particular interview or to previous interviews? I'm not sure from the question.

THE COURT: He's asking about the report which is Defendant's Exhibit B, is it?

MR. BOBICK: B, your Honor.

THE WITNESS: On this one particular interview on this date Mr. Rosen did not mention the cashing tickets by Mary Grannum.

Q Now, is it not a fact that this report was based on an interview that took place on April the fifth?

A If that's what it says, if that's the date he was interviewed.

Q Well, I thought you looked at it, sir. I'm sorry.

MR. MEYERSON: Your Honor, I still don't understand the relevancy.

THE WITNESS: Right, he was interviewed on April fifth.

THE COURT: Wait a moment.

Q On April fifth --

THE COURT: Wait a minute. What is it, Mr. Meyerson?

MR. MEYERSON: I still don't understand the relevancy of the questions referring to another cashing by Michelle Graziano.

THE COURT: All right, that will come out on summation.

Q Now, sir, did Mr.Rosen tell you that he saw Mary Grannum?

A On this April fifth interview?

Q Yes.

A He mentioned that he saw Mary Grannum in his branch.

Q Yes.

A -- With Seymour Rothstein and Michelle

Graziano, yes.

Q And did he say what date that they were into the branch?

Well, if he gave me a date I would have written it down and I would have to refresh it again. This is eight months ago.

Q I'm sorry?

A It says on April third.

Q April third, did he say anything to you about seeing Mary Grannum on April second or on April fourth, the day before and three days before?

A Not on this particular day, no.

Q Well, sir, do you have any other reports of that same time which says that he saw them on April second or saw her on April second or April fourth?

A I don't believe so.

Q All right. Now, sir, is it usual for the FBI to allow books of pictures to be laying around so that any casual person can stop by and --

A No, sir.

Q Do you think it's at all possible that a person can sit down at a desk and glance through FBI pictures?

A It's possible that we -- we do have elimination albums where individuals will come in and look at bank robbers

or something to that effect. It's possible there could have been one out on a desk and these are used as a matter of investigative techniques.

Q Well, was it your -- was it your policy during the interview to allow people to walk around unescorted in the FBI headquarters?

A No, it's not our policy.

Q Well, didn't you tell us that an agent took each person from the room and took him down to another room where they made a statement?

A Yes, sir.

Q And then escorted them out the door.

A Yes, sir.

Q And isn't it a fact that Mr. Rosen had with him at all times an agent assigned to him while he was in the FBI building?

A He was supposed to, yes, sir.

Q Now, sir, is it the usual practice not to make a report about an attempted bribe to a witness?

A Our basic rule is to put on paper, on the 302's anything that is testimony. At that point in time when I was down there talking to Mr. Lent and he brought Mr. Rosen in about this particular instance, there was no reason to think that this was possible testimony,

as we didn't even know, I don't believe, who Mary Grannum really was at that time.

Q So that you weren't asking Mary Grannum to come in for a line-up on -- when this thing happened?

A Several months before -- before we had no idea there would be a line-up at that time.

Q There was no investigation as far as -- or there was no reaching for Mary Grannum, was there?

A On this particular time of the investigation there was not.

Q So that actually, what you're actually saying to us, that when Mr. Rosen said to you, "That's the cab driver" is that what he said?

A I believe so.

Q The cab?

A I believe so.

Q And what did Mr. Rosen say the cab driver offered him?

A I think he said that he could name his own price. I believe that was his exact words.

Q And that was the comments that he made then?

A I believe so.

Q That you can name your own price if you don't mention the girl?

A Either if you forget all about it or you don't identify her, or something to that effect.

Q I see, but the comment wasn't connected with the line-up, was it?

A No, sir, the line-up --

Q It wasn't -- it wasn't connected with this defendant's line-up, was it?

A The line-up was months after.

Q It had nothing to do with it?

A At that time, no.

Q All right. So that this alleged bribe occurred for something which you weren't even contemplating, is that right?

A At that time, yes.

MR. BOBICK: I have no further questions.

(Continued on the next page.)

THE COURT: Anything more, Mr. Meyerson?

MR. BOBICK: Do you want this?

MR. MEYERSON: Further redirect.

REDIRECT EXAMINATION

BY MR. MEYERSON:

Q Directing your attention to approximately August you did interview Mr. Rosen again, is that correct?

A Yes, sir, after the line-up.

Q And at that time had you learned more information about Mary Grannum?

A Yes, sir, at that time we did.

Q And at that time did you question Mr. Rosen about Mary Grannum and the different dates she was cashing?

A Yes, we had -- we had looked at the 1099's --

THE COURT: The question was whether you questioned him about it.

THE WITNESS: This is on the day of the line-up.

Q No, sir, this is --

THE COURT: In August when you questioned Mr. Rosen.

A Yes, I believe there was an interview on August 30th.

Q Do you want to refresh your recollection?

A Yes. I haven't seen it. I know I talked to

Mr. Rosen several times.

MR. MEYERSON: Can we have this marked as identification?

THE CLERK: Two-page report marked Government's Exhibit 10 for identification?

(So marked.)

THE WITNESS: This, I believe, is the interview that took place directly after the line-up that -- when Mr. Rosen came back to the office, when we called him. It's on August 30th.

MR. MEYERSON: I have no further questions.

MR. BOBICK: Yes, I have.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. BOBICK:

Q Did Mr. Rosen tell you that he filled out the 1099's?

A He filled out the 10 -- I don't believe he did, I think Mr. Sullivan did, he told me.

Q He told you Mr. Sullivan. Suppose you read it to refresh your recollection, sir, and then answer the question.

A No, he says that the manager, Jack De Matteo, did it.

Q I see, so that Mr. Rosen told you on August 31st that he didn't even fill out the 1099?

THE COURT: What did he --

THE WITNESS: What was the question again?

Q Did Mr. Rosen tell you on August 30th or 31st that he didn't fill out the 1099 involved with Mary Grannum?

A Right, he told me that Jack De Matteo did.

Q I see, and that's part of your official report?

A Yes, sir.

Q Now, is it not a fact that when Mr. Rosen came back, or when Mr. Rosen identified, went through the identification and identified the FBI employee, number three, he then left; is that correct?

A Not exactly. He -- he picked out the individual number three.

Q Yes.

A He then went downstairs with an agent and he told the agent that it was number three, and then at that point he was ushered from the building with another agent.

Q Right.

A And he left.

Q And then he came back?

A He was called back by us.

Q And when he came back you had a conversation with him?

A Yes, sir.

Q You were present and other people were present too?

A One other, agent.

Q Another agent was present?

A Right.

Q And at that time did you remind him that he had made a mistake?

A At that time we had further knowledge, the fact that Mr. Sullivan had already stated the conversation between him and Mr. Rosen and the fact that they were going to pick out the wrong one on purpose. And this was told to Mr. Rosen, that we knew he had discussed this with Sullivan, we knew he was going to pick out the wrong one on purpose, and we told him if we -- if he did go before the Grand Jury and told them that that we'd be able to prove that it was perjury.

Q And did you also tell him that the one he picked out couldn't be the one because she was an FBI employee?

A I don't believe it was -- it was stated as such. I believe that we told him that we knew he picked out the wrong one on purpose. We didn't tell him-- all the girls that were there were FBI employees except for Mrs. Rodgers.

Q But you told him that she couldn't be the one because she was an FBI employee?

A No, I don't believe that was the statement.

Q Well, did you tell us this yesterday, do you remember being asked this question under oath:

"Question: And you told him that you knew she couldn't be the one because she was an FBI employee?

"Answer: Among other things that we said."

Does that refresh your recollection whether you said it or not?

A Well, if that was implied, I don't believe that that's what I meant.

Q Well, do you remember being asked this question:

"Question: You talked to him first. Did you tell him that the woman he picked out was an FBI agent -- employee?

"Answer: Right.

"Question: And you told him that you knew

she couldn't be the one?

"Answer: Among other things we told him."

Now, did you tell us yesterday that you told him she was an FBI employee and couldn't be the one that did it?

A Probably.

Q Okay. And did you ever mention anything to him about a Grand Jury?,

A I just got through saying that, that if he went before the Grand Jury and he stayed with the same story that there is a possibility that that would be perjury.

Q Well, did you ever tell him "We're going to put you before a Grand Jury?"

A I don't know.

Q "We'll put you before a Grand Jury."

A I probably could have said that.

Q Right. And this was a friendly conversation that you and the other agent were having with Mr. Rosen when he came back, right?

A Basically it was business-like, not friendly.

Q Business, so that if Mr. Rosen describes it as friendly you would describe it as business?

A Yes, sir.

Q And primarily you were doing what you were supposed to do, that's advise him of his rights? Did you?

A I don't believe that -- that we had to at this time advise him of his rights, as -- as he hadn't made any statements. We did -- we were doing the talking.

THE COURT: I suppose Mr. Bobick may mean not Miranda rights, but general rights. Is that right?

MR. BOBICK: Yes, your Honor, I was referring to his right not to go before the Grand Jury or that you would subpoena him before the Grand Jury, the right --

THE WITNESS: No, we hadn't mentioned that, no, sir.

Q And you also told him about perjury.

A I believe I mentioned that, yes, sir.

Q And meanwhile, when he came back, did he say anything to you before you started to talk about the Grand Jury and perjury, did he say anything about "I spoke to my wife and want to do what my American citizenship requires?"

A I know that he mentioned he had gone home and we -- I don't know if he had mentioned he had talked to his wife.

Q I see, and before you spoke to him about the

Grand Jury and before you spoke to him about perjury, did he tell you "I want to change my story from yesterday -- from this morning?"

A No, sir, we called him in, we told him that we knew he was lying.

Q Oh, you used the word lying?

A Well, we knew he picked out the wrong one.

Q Well, did you say lying?

A I don't believe so.

Q You don't believe you said lying and at that point he decided he was going to pick out -- by the way, did you tell him that Constance Rogers was number six?

A No, sir.

Q Now, I would like to go back to your first interview that you had with Mrs. Rodgers.

MR. MEYERSON: Your Honor, we're going far beyond redirect. It's going over the same thing. He already had a chance to cross.

MR. BOBICK: Your Honor, May I --

MR. MEYERSON: And recross.

MR. BOBICK: May I briefly argue the point. We never discussed the meeting of May 8th until Mr. Meyerson brought it up on redirect.

THE COURT: I will let you go into it anyway.

Overruled.

Q Now, would you tell us what happened -- you have your report in front of you so I don't have to run back and forth.

A Yes, sir.

Q Would you tell us what happened on May 8th, sir, if you can from your own recollection, if you can't then from the report?

A I went with another agent, Thomas French, and we had a subpoena to subpoena Mrs. Rodgers before the Grand Jury. That was Strike Force. We went up. It was approximatelynine to ten o'clock in the morning, and rang the doorbell and Mrs. Rodgers came to the door. We gave her the subpoena telling her that she was to appear I think, probably the following Monday, and at that time we asked her if she had seen Forrest Gerry, another individual that we were trying to subpoena and who we had reason to believe that she had -- that she knew very well. She stated she hadn't seen him in a couple of weeks, didn't know when she'd see him again, and that she couldn't imagine why she was being subpoenaed as she had only cashed one Superfecta and that was at Yonker's Raceway.

Q Let's get to that point: Did you tell her that the subpoena for the Superfecta investigation?

A Probably.

Q Well, do you remember?

A I am sure that we told her it was about that if she hadn't -- if she hadn't known or -- I think we did tell her it was the Superfecta investigation.

Q I mean there could have been anything that you went up there but you told her it was about the Superfecta, right?

A I'm -- I'm almost positive.

Q All right, now did you also mention Yonker's? Did you talk to her about we're serving a subpoena for the Superfecta investigation at Yonker's?

A I probably just said the Superfecta in general.

Q I see, and isn't it a fact that she said to you that she only cashed one Superfecta ticket at Yonker's?

A She said she only cashed one Superfecta ticket at --

Q Would you read your report, sir, and read it out loud?

A "Mrs. Rodgers stated that she only cashed one Superfecta ticket, which was at Yonker's Raceway."

Q Is there a comma in your report after one

Superfecta ticket or is it just -- may I see,Mrs. Rodgers stated she had only cashed one Superfecta ticket, which was at Yonker's Raceway and did not wish to make any more statements?

A Mrs. Rodgers stated that she only cashed one Superfecta ticket, which was at Yonker's Raceway and -- no comma.

Q No comma?,

A No, sir.

Q So there -- but you don't remember your asking about the Yonker's Superfecta investigation and Mrs. Rodgers telling you she cashed one Superfecta ticket at Yonker's?

A This was never considered the Yonker's Superfecta. It's always been Yonker's, Roosevelt and OTB.

Q Well, is that what you said when you walked into her, we got a subpoena because of the Superfecta of Yonker's, Roosevelt and OTB?

A It was just Superfect investigations.

Q Never mentioned Yonker's?

A Never mentioned Yonker's, Roosevelt or OTB.

MR. BOBICK: All right, no further questions.

THE COURT: Anything more? You're excused, Agent Gianturco.

(Witness excused.)

THE COURT: All right, we'll take a five-minute recess.

MR. MEYERSON: One minute. One question.

THE COURT: All right, one question.

S A M R O S E N, having been previously duly sworn, resumed the stand and further testified as follows:

THE COURT: You have been sworn once. You are still under oath, Mr. Rosen.

MR. BOBICK: Your Honor, I would have no objection, but I think that it would be proper if he would have asked permission being he already excused this witness and your Honor, I believe -- I have no objection, but I think it should be properly noted that it's improper.

THE COURT: All right. If permission had been requested I would have granted it.

MR. MEYERSON: I'm sorry.

BY MR. MEYERSON:

Q Mr. Rosen, I only have one question for you: Obviously at some previous time you had stated that 1099's might have been filled out by Jack De Matteo.

A Right.

Q Now, was that before you had seen the 1099's itself? You had not seen the 1099 at that time?

A I would not necessarily see them.

Q All right, now I ask you to look at Government's number three and four again. Now, is that your handwriting?

A Yes.

Q Is there any doubt in your mind?

A None.

Q And it was the defendant who --

A Yes.

Q -- did it under that name?

A Right.

MR. MEYERSON: No further questions.

THE COURT: Any questions?

RE-RECROSS EXAMINATION

BY MR. BOBICK:

Q Why did you tell the question Sam De Matteo -- what is it, Matteo -- who filled them out?

A To the best of my recollection I never said that Jack De Matteo filled them out.

Q Oh, Jack De Matteo, you never told that to anybody?

A I might have said that Jack De Matteo has the authority to fill them out, the same duties as I have, and he could do it.

Q I see, and you think --

A But he won't use my name, he would be using Jack De Matteo's name if he had filled it out.

Q Well, do you think that the FBI -- did you ever tell the FBI about Jack De Matteo or they just made the name up, does he exist?

A If no question is asked of me I don't volunteer any information.

Q I see, and you say you never told the FBI that the 1099's on the second of April and the fourth of April were filled out by Jack De Matteo?

A I say I filled them out because my signature is on them.

THE COURT: No, did you ever tell the FBI that De Matteo filled them out?

THE WITNESS: Fills out 1099 forms.

Q I see, they were wrong in their pronunciation?

A No, I don't -- I don't say that. I says that if anyone comes in with a big winning, Jack De Matteo has the authority to fill out 1099 forms.

THE COURT: Well, we're far beyond one question. Let's take out five minute recess and if you want anything more of Mr. Rosen you can ask it then.

(Recess was taken.)

(After the recess.)

THE COURT: Anything more of Mr. Rosen?

MR. BOBICK: Well, your Honor, the checkbook came in and I think we need him back again for that purpose.

THE COURT: All right, bring in the Jury and bring in Mr. Rosen. And are you going to want to have this Agent French who went to 95 something Horace Harding Boulevard? I let it in on hearsay because I thought it was not a matter that was really disputable.

MR. BOBICK: No, your Honor, I don't want him back.

THE COURT: All right, very good. Bring in the Jury.

(Jury entered the Courtroom.)

MR. MEYERSON: May we have this marked?

THE CLERK: Book marked Government Exhibit 11 for identification.

(So marked.)

BY MR. MEYERSON:

Q Mr. Rosen, I just thought this and I would like to ask you to look at Government Exhibit 11 and identify and describe it for us.

A This is the checkbook from Off Track Betting

in which we make out large payments of cash when we run out of money.

Q And I would like you to refer to check #022-10206 and 07, and ask could you tell us who is -- who are those checks made out to?

A These checks were made out to Mary D. Grannum in the amount of one for $10,000 and another one for $8,048.60 by me.

Q And your signature is on them?

A Yes.

Q And that amount would correspond to the amount on the 1099?

A 1099 form, correct.

Q And would you please read out the address that's listed for Mary Grannum?

A 129 West First Street, Roselle, New Jersey.

Q And that's the same as the 1099, is that correct?

A Same as the 1099.

Q I would like to direct your attention to April fourth, to checks 022-10211 through 022-10214. And could you tell us who was the payee on those checks?

THE COURT: I thought they were made to cash.

THE WITNESS: These checks --

THE COURT: The person at whose request they were made or for whose account they were made.

Q Will you tell us who the -- who was the payee?

A The payee was Mary Grannum, the address 129 West First Street, Roselle, New Jersey, made out by Jack De Matteo.

Q The checks were made out by Jack De Matteo?

A Yes, he has the authority to write checks.

Q Okay. And is it -- would it still be a practice at OTB that the checks would be made out to cash while it would be listed there as to exactly who it was?

A The checks are generally made out to cash, but as far as the listing on here, it doesn't necessarily have to be listed by name. We -- we -- I generally -- and I think I teach every shift manager to put in the name that's on the 1099 form.

THE COURT: Well, what are the amounts of these checks?

THE WITNESS: Checks 022-1021 through -- what did you say, 08?

Q The four checks.

A The four checks, to -- 022-10211 is each

in the amount of $10,000.

Q And then the last one, the fourth one? There were three at $10,000. The fourth one?

A And the last one for the amount of $7,876.80.

Q And that would be the amount corresponding to the 1099?

A Right.

MR. MEYERSON: I have no further questions.

THE COURT: All right, any further questions, Mr. Bobick?

MR. BOBICK: Yes, your Honor.

RE-RECROSS EXAMINATION

BY MR. BOBICK:

Q When you say the payee, the checks weren't made out to the payees, were they?

A They were made out to Mary Grannum.

Q They were made out to Mary Grannum?

A Yes. No, the checks were made out to Mary -- . our stubs were made out to Mary Grannum.

Q All the checks were made out to cash?

A Right.

Q You don't know who cashed them?

A To the best of my recollection --

Q Yes.

A -- I think it was Mary Grannum that cashed them.

Q You -- you recollect that now?

A I -- I said to the best of my recollection.

Q Well, the fact of the matter is you told us before that you made out the checks for $37,000, didn't you?

A I also stated on a previous --

MR. MEYERSON: That wasn't the testimony.

THE COURT: No, did you say that?

THE WITNESS: I might have said it. I also stated the fact that Jack De Matteo also had the authority to --

Q You never mentioned Jack De Matteo until the last time you came in here, isn't that a fact?

A How about yesterday, did I mention him yesterday?

Q No, you didn't mention him yesterday.

Now, did you -- did you ever tell us that you made out the checks for $37,000?

A I said to the best of my recollection, what I could remember, I think I did.

Q Did you tell us that you wrote out the checks for $37,000?

A To the best of my recollection I told you I

thought I did.

Q I see. All right. It's your recollection that matters. Right?

A Right.

Q Now, did you tell us whether or not Seymour Rothstein, Michelle Graziano and Mary D. Grannum all had winning numbers on April second?

A I never told you that, no.

Q You never told us that?

A I told you -- I -- I never told you that.

Q Well, did Michelle Graziano, Seymour Rothstein and Mary Grannum have winning tickets on April second?

A I never told you that. I --

Q Well, did they?

A I can't recall. I said they very well could have.

Q They could have. Mr. Rosen, on April second, did you make out check 10,200 for Michelle Graziano for $10,000?

A I very well could have.

Q And on April second did you make out check 10,201 to Michelle Graziano for $10,000?

A I very well could have.

Q And on April second did you make out a check

number 10,202 to Michelle Graziano for $10,000?

A I very well could have.

Q And did you on April second make out check #10,203 to Michelle Graziano in the sum of $2,726.10 for a total of $32,726.10?

A I will state that if my name is on the stub of that check I made it out.

Q Okay. And did you write out check #10,204 on April second to the cab driver for Friday and Saturday?

A If my name is on it I very well --

Q And is that cab driver Seymour Rothstein?

A True.

Q And did you make out a check on April the second, #10,204 to Seymour Rothstein's for $10,000?

A I very well could have.

Q And did you make out a check on April the second, 1973 to the cab driver, Friday and Saturday, for $4,500?

A I very well could have.

Q And was that check #10,205?

A If my -- if my name is on the check stub it would be.

Q And then is it not a fact that you started with the Mary Grannum's checks, numbered 10,206?

A The exact number of checks I cannot recall. If my name is on the stub I will admit to writing that check.

Q And isn't it a fact, sir, isn't it a fact that on April the second you made out the checks to Michelle Graziano, Seymour Rothstein, and then to Mary Grannum?

A It very well could be.

Q So that all three of them were present at your place on April second?

A It very well could be.

Q Well, on April the third, did you -- was a check made out to Michelle Graziano, number 10,208 for $10,000?

A If my name is on the check stub it would be.

Q Well, were these books kept in the regular course of business?

A Yes.

Q And is this the regular course of business to write down the names?

A I do it that way, yes.

Q Right. And if -- and was -- on April third was check #10,209 written out to Michelle Graziano in the sum of $10,000?

A If my name is on it I wrote it.

Q Well, whether your name is on it or not was the check written in the name Michelle Graziano appearing with the check number and the amount $10,000; would that indicate the check was written?

A Yes, it would. The check is written.

Q And was $10,210 written on April the third for Graziano for $10,000?

A If the check is there with my name, the stub, it was written on that date.

Q So isn't it a fact that on April the third, Michelle Graziano collected $30,000? That's $32,000on April second, 30,000 on April the third, is that right?

A Very well could be.

Q Now, sir, was Michelle Graziano there on April the fourth?

A At this precise moment I cannot recall whe. she was there April fourth.

Q But didn't you tell the FBI agent that on April the third Rodgers, Graziano and Grannum were there?

A I think you were trying to remind me that it was April second, wasn't it?

Q No, I was trying to remind you it was April third. Did you tell the agent on April the fifth that on April third all three were there?

A I cannot remember the exact date, sir.

Q Well, sir, would you have lied to the FBI?

A I never lie, sir.

MR. BOBICK: Oh, fine, I have no further questions.

THE COURT: All right, you can step down. Thank you.

(Witness excused.)

(Continued on the next page.)

THE COURT: Any objection?

MR. BOBICK: Well, your Honor, I -- is he going to offer the whole book or just the pages --

MR. MEYERSON: The whole book.

MR. BOBICK: I have no objection.

THE COURT: All right, it will be received.

MR. BOBICK: Oh, wait, can I see that just a moment? Your Honor, before I consent to the exhibit, may I look?

THE COURT: All right.

MR. BOBICK: Oh, this book is only his book, his office, right?

MR. MEYERSON: Yes.

THE COURT: All right, it will be received. We'll take our luncheon recess. Well, you have two minutes. You used two minutes yesterday. Try it now.

MR. MEYERSON: I don't think so.

THE COURT: All right, I have a couple of things to take up with counsel. We'll resume at two-thirty this afternoon. And meanwhile don't talk about the case among yourselves or with anyone else, and don't talk to any of the Courtroom personnel at all about anything. THank you.

(Jury left the Courtroom.)

THE CLERK: Government's Exhibit 11 marked in evidence.

(So marked.)

THE COURT: Mr. Meyerson, how much more proof are you going to have?

MR. MEYERSON: Your Honor, I believe the Government will rest after lunch. I just -- there might be some evidence of a similar act which might require a Wade Hearing because of the identification.

THE COURT: Well, make up your mind. I want to pick a jury in Valdes or at least get started this afternoon because we have thirty jurors here and we need statistics.

MR. MEYERSON: I see, I see.

Could I tell you after lunch, Judge?

THE COURT: How long are you going to take, Mr. Bobick?

MR. BOBICK: Well, your Honor, depending, if he has all my witnesses here I will be ready to go on this afternoon.

THE COURT: Well, Mr. Rodgers is here.

MR. BOBICK: Well, I have got Rodgers, I have got --

THE COURT: Mrs. Friedman youwant?

MR. BOBICK: Mrs. Friedman, I have got

Mr. Nelson here and I have also got Mr. Pullman here, so I have got four witnesses or five witnesses.

THE COURT: Well, you probably will be through all afternoon with them and we'll have-- we won't get summations and instructions before tomorrow.

MR. BOBICK: Well, I would like to arrange for -- if I go on summations tomorrow anyway, regardless of whether we get done early or not --

THE COURT: We'll just start on the picking of a jury. We'll start this case at two-thirty anyway, and I will let the jurors go to show usage of the jurors.

MR. MEYERSON: Should I be here --

THE COURT: You should be here at two, Mr. Meyerson, Mr. Bobick at two-thirty.

(Luncheon recess was taken.)

(Continued on the next page.)

Rogers SS
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AFTERNOON SESSION

2:00 p.m.

MR. MEYERSON: On the case that is on trial, a call was made. Mr. Pullman is not in our control but we said we would try to locate him. We called him yesterday. He said he would be in today at 8:30.

A call was made this morning. He left work and he doesn't answer at home, but he's not here. I'm fearful of what might have happened to him.

THE COURT: You can put it on the record.

MR.MEYERSON: We did all we could.

I'll let you know later.

Mrs. Friedman has been told to be on call. She isn't on call. She is not answering her phone.

(Recess)

MR. MEYERSON: The Government will rest.

THE COURT: Mr. Bobick, I think there is a jury issue, but tell me any reason why the motion to acquit should be granted.

MR. BOBICK: Your Honor, for the record, let me make a motion: at the end of the People's case I move for a dismissal on the grounds the Government has failed to establish a prima facie case.

THE COURT: I think there is a jury issue. I'll deny the motion.

I take it you're going to bring in evidence.

MR. BOBICK: Yes, we'll present some evidence. I understand, your Honor, we have a slight difficulty. May we go off the record?

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

MR. MEYERSON: Mr. Bobick has asked me to have available several witnesses. I would like to say that none of them are under the Government's control. However, we did make good faith efforts to get them. Mr. Phil Nelson from the OTB, he's here. Mr. Seymour Rothstein is here. Miss Roslin Friedman was asked to be on call. She called this morning, from the chief in OTB. I understand she received the call and was told to be available this afternoon. She doesn't answer her phone now. We have been trying. There is someone going out to see whether they can get her.

Mr. Pullman was requested. Mr. Pullman is a defendant in a case against Peter Vario. He has not pleaded yet. We did call him. He does not have an attorney. He said that he would be in .

today at 8:30. We called his work and we understand he left to come down here earlier this morning. He has not shown up. We can't find out where he is.

THE COURT: Who's the first witness?

MR. BOBICK: I would use Nelson first and then I would use Friedman if she shows up, second, and you brought the checkbook. That's o.k.

THE COURT: You still have Sullivan here.

MR. BOBICK: I would like to start with Nelson and see where we go from there.

THE COURT: All right. Get him in and get the jury in.

(Jury enters the jury box.)

THE COURT: Mr. Meyerson, will you repeat your statement now that the jury is here.

MR. MEYERSON: The Government rests.

THE COURT: It is up to the defendant.

Do you wish to put in any testimony, Mr. Bobick?

MR. BOBICK: Yes, your Honor.

At this time the defense would call as the first witness Mr. Phillip Nelson.

P H I L L I P E U G E N E N E L S O N, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BOBICK:

Q Mr. Nelson, my name is Edward Bobick. I represent Mrs. Constance Rogers. Have you and I ever spoken before?

A No.

Q Never talked to me or anybody from my office?

A No.

Q We never discussed what you're going to testify?

A No.

Q You're down here at the request -- because I asked the Government to have you down; is that right?

A Correct.

Q What is your business or occupation?

A I'm now acting manager for Off Track Betting in our Rego Park office.

Q What branch office is that, sir?

A Branch 29.

Q Were you employed at Branch 29 on March 20 or March 21 of 1973?

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Nelson-direct

A That's correct.

Q Is that correct?

A Yes.

Q Are you familiar with those dates -- the date March 21, 1973?

A The only thing that I can associate that date with is that we were on campaign trying to petition to keep Off Track Betting open during that period.

Q Are you familiar with the defendant in this case?

A Yes, I am.

Q Did you see her at the Branch 29?

A During that time, I think so.

Q Did you happen to know what name she was known as?

A I knew her as Connie.

Q Connie. Did you ever know her as Annette?

A No.

Q When she came to OTB on those various occasions you always knew her as Constance or Connie?

A Correct.

Q Well, sir, on March 21, 1973, do you remember Mrs. Rogers coming to the OTB office while you were sitting at a card table near the entranceway getting petitions?

MR. MEYERSON: Your Honor, that's a very leading question.

THE COURT: It assumes a couple of facts, but I'll short-cut it by letting it be answered.

A Would you repeat that again, please.

MR. BOBICK: Repeat the question.

(Record read)

A It's possible the date is correct.

Q Next door to your OTB office is there a Castro Convertible place where they sell Castro Convertibles?

A A few doors away.

Q Do you have any recollection of a conversation concerning --

MR. MEYERSON: Your Honor --

THE COURT: Don't lead. Ask who and what.

Q Do you have any recollection of a conversation between yourself and Mrs. Rogers concerning her going to Castro Convertible?

MR. MEYERSON: It's very leading.

THE COURT: Did he have a conversation and what was the conversation.

Q Did you have a conversation with Mrs. Rogers?

A I had quite a few conversations. In the parlor, sometimes outside the parlor. I don't know about Castro

Convertible.

Q Do you recollect when Mrs. Rogers came to you on March 21, 1973, with a winning ticket for a Superfecta?

A She came to me with a winning ticket. I'm not sure of the date.

Q At the time she came to you with the winning ticket for a Superfecta, had she told you that she had lost her identification and that she had a Social Security card --

MR. MEYERSON: It's very, very leading, about the third clause of his question.

THE COURT: I think you have to establish that the witness has no recollection before you tell him what you want him to testify, Mr. Bobick.

Q Do you have any recollection of Mrs. Rogers coming to you and telling you the only identification --

THE COURT: No, what did she say with respect to the winning ticket?

MR. MEYERSON: On which date, your Honor? He has no recollection of any date.

THE COURT: He said she came to him with a winning ticket.

THE WITNESS: Yes.

MR. MEYERSON: Your Honor, may I make a further objection. If we are not talking about,

March 21, then it's irrelevant. That's the date --

THE COURT: The witness doesn't remember a date particularly.

Q Do you remember her ever coming with more than one winning ticket?

A No, not to me.

Q The one day we're talking about is a one winning ticket that we're talking about?

A Assuming that your date is correct, yes.

Q Assuming that that is March 21. Do you remember her coming and discussing with you the winning ticket?

A I remember her coming to me asking me would I cash the ticket for her.

Q Right. Were you seated at that time at the table, bridge table that you had set up for the appeals?

A I was in and out, in and out because we were doing shifts constantly. Everybody was on the staff in and outside the office.

Q Did Mrs. Rogers give you any identification with that winning ticket?

A Yes, she did.

Q Now, I --

MR. BODICK: May I have this marked as

Defendant's Exhibit C and Defendant's Exhibit D for identification.

THE CLERK: Two cards marked Defendant's Exhibits C and D for identification.

(So marked)

Q At this time I show you Defendant's Exhibit C for identification (handing to the witness), and Defendant's Exhibit D for identification (handing to the witness)--

MR. MEYERSON: Can I see them?

MR. BOBICK: It's only for identification.

MR. MEYERSON: I still have a right to see them.

A The question about her identification here, the identification with the photograph was a small one similar to the size of the Social Security card. It was in color.

Q In color?

A Yes.

Q It's not this one (indicating)?

A No.

Q How about that one?

A It could be possible that is the identification.

MR. MEYERSON: May I have a voir dire?

THE COURT: They haven't been offered.

MR. MEYERSON: Could I see it?

MR. BOBICK: Yes.

MR. MEYERSON: And the other one?

MR. BOBICK: Yes.

(Said documents handed to Mr. Meyerson.)

MR. BOBICK: May I have them?

(Said documents handed to Mr. Bobick.)

Q Now, did she give you the ticket and the identification and ask you to cash it?

THE COURT: Please. What did she do?

Q What did she do with the identification and --

MR. MEYERSON: What identification is he talking about? He said one isn't the identification. The other one is possibly. What identification is he talking about?

THE COURT: Please. You can object to a question, but don't ask questions of counsel. You should address yourself to the Court.

Mr. Bobick, what is your question?

Q The question is, were you given the identification and the ticket, the winning ticket, and asked to do something with it?

THE COURT: After, when she gave you the identification, did she give you anything else?

THE WITNESS: With the Social Security card,

as I indicated before, she had an ID similar to a City Employment ID card, the same size approximately as her Social Security card, with a technical picture of her on the card.

Q Did she ask you to cash the ticket?

THE COURT: What did she ask you to do?

THE WITNESS: She asked to have the ticket cashed. I said,"We would be glad to accommodate you." She handed the information to the cashier to process the ticket, which is a corporate procedure.

Q Did she give it to you and then leave the OTB office?

A She never left the office. I would not accept it.

Q She gave you the I.D. card. Did she give you a driver's license?

A No.

Q Are you sure it wasn't a driver's license?

A I'm positive it wasn't a driver's license.

Q You're absolutely sure she did not hand you a driver's license?

A If you can find me a driver's license the size of a Social Security card, good.

THE COURT: Don't volunteer.

Q Did she give you a driver's license?

A No.

Q But she did give you a Social Security card?

A Right.

Q Do you remember -- Did you have any conversation with her at that time about lost identification?

A No.

Q Did she talk to you about her married name?

A No.

Q Now, did you present the ticket to the cashier or did she?

A She presented it to the cashier.

Q Do you know who the cashier was?

A I don't offhand.

Q Is it the job of the shift supervisor to be the cashier?

A No.

Q When you say "the cashier," are you referring to Mrs. Friedman?

A No. Mrs. Friedman is a supervisor.

Q She wasn't the cashier?

A No, but she could have been inside the vault. Therefore she would be responsible for 1099 tax forms. A cashier, if you're not familiar with the procedure yourself of off track betting, I'll be glad to inform you.

Q I'll be glad to find out.

A The procedure is that a person cashing, upon cashing a winning ticket, if it's a $2 winning ticket, over $600, requires a 1099 tax form.

On a $3 wager, over $900 requires a 1099 tax form. Upon that the customer must present sufficient evidence of identification, be it a Social Security card, a driver's license, or some other employment identification which is indicated on the 1099 column as "Other."

That ticket has to be submitted to the cashier because if the cashier doesn't have sufficient funds to pay out that amount, we have to check our vault. Therefore we have to be notified of the transaction.

Q Right. I'm still waiting, sir.

A I don't handle the transaction directly, no.

Q Do you know what happened after she handed you or handed the ticket and the identification?

A The ticket was processed. She was paid.

Q Who was it handed to, the cashier?

A The cashier.

Q Now, do you remember cashing that ticket?

A I was standing there. I have to verify large amounts over $500.

Q When the cashier processed the ticket, you

were the one who authorized the payment?

A No, I have to go back and check to make sure that the amount of money is there in the vault, for the payment, proper documents are made up, like the 1099 form, whatever is requested. If it's by check, the check is made up.

Q Was Mrs. Friedman present at the time?

A The particular date she could have been present.

Q Not at the particular date, but at the particular time that Mrs. Rogers was paid, did Mrs. Friedman manhandle the payment or did you handle the payment?

A If you can give me a date --

Q March 21, 1973.

A I'm not sure.

Q Well, you remember when Mrs. Rogers won?

A Yes, but I'm not sure of which date.

Q But you remember your standing there when she was paid?

A On one occasion, within March.

Q In March. Now, the next question is would it be -- and this is what we have to understand -- would it be that Mrs. Rogers could have submitted the payment to the cashier, that you could have taken the information into the back room where the 1099 was prepared by Mrs. Friedman in the back room and then you came out --

MR. MEYERSON: The question is, could it have been. We are not talking about any possibility that might occur.

THE COURT: You should restrict yourself to the witness's recollection.

MR. BOBICK: I'm trying to see if I can refresh his recollection.

Q Does it refresh your recollection that the ticket was presented with the identification, that you took it into the back room --

THE COURT: You can refresh his recollection by showing him something. I don't think you can refresh it by making statements.

MR. BOBICK: Perhaps I can refresh it by asking the question.

THE COURT: Ask a question, but don't make a long statement.

MR. BOBICK: All right.

Q Did you take the ticket and the identification into the back and have Mrs. Friedman fill out the 1099 which you brought forward and had Miss Rogers sign?

A I explained to you the procedure. The procedure was the ticket would have to go to the cashier with the identification. Therefore, meaning that I would have to leave

the public area and go into the back to make sure all the documents were processed properly.

If your question is could another person have filled out the 1099 with identification, yes.

Q The answer -- That's the question. The answer is yes?

A Yes.

Q Do you know on this occasion while you were standing there when Mrs. Rogers was paid whether or not Mrs. Friedman was also standing there?

A No, I don't know.

Q Had you ever -- Withdrawn. Had you taken the ticket and the identification on March 21, 1973, into the back, had Mrs. Friedman paid --

MR. MEYERSON: Your Honor, this is his own witness. It's direct testimony. He is leading.

MR. BOBICK: Your Honor, I ask for a court ruling with all due respect to the witness that this witness be declared a hostile witness. The evidence is here. I have never spoken to this man before, and have no way of knowing what he is doing and I think the only situation is I should be allowed to question him as if I'm cross-examining, allowed to lead him a little bit.

He was brought down through the Government's office, sitting in the Government witness room. The fact is that I have never been able to --

THE COURT: Before you lead him, you should try to draw out facts and find out his best recollection on it.

MR. MEYERSON: Your Honor, may I oppose that on the record.

THE COURT: Go ahead, Mr. Bobick.

Q Do you remember if on March 21, 1973, you were given or shown the ticket and the identification that was given to the cashier and then taken by you to the rear office where Mrs. Friedman filled out the 1099 and that at that point you brought back the 1099 and the money and paid Mrs. Rogers and she signed the 1099?

A If you just remember what I just indicated to you as far as procedure is concerned, you're misleading in one respect.

Q What was that, sir?

A Which I feel is not fair to myself because I have answered your question twice. I told you we follow procedure. You keep implying the possibiliyt of me being on the outside of the branch when it's mandatory I function from within.

Q Well, may I ask this. I'll amend the question to see if it refreshes your recollection. You were outside by this table where the petitions were being signed and that when Mrs. Rogers came in and spoke to you you then went behind, went through the double doors into the back of the OTB and from then on operated on the inside of the room?

A Yes.

Q Now, sir, do you remember Mrs. Rogers collecting the money for the winning ticket from you?

A I was verifying the money with the cashier. She was at Window No. 1, and she was paid.

Q She was paid?

A She signed the 1099 form and her money was given to her.

Q Now, sir, do you recollect -- First, you had a lot of winning tickets at your place?

A Yes, we had, but if I can add something to it: usually, you know on the previous day's winnings if you're going to have large payouts, you anticipate this. You're a little bit more keen on how much money you're going to have to have on hand. It sharpens your memory.

Q Well, sir, can I see whether your memory is sharpened to the extent -- did Mrs. Rogers ever tell you about losing her identification and that she was using her

maiden name?

A No.

Q You have no recollection of that?

A No.

Q Again, I show you this card (indicating), Defendant's Exhibit C for identification, and ask you if you have ever seen that before (handing to witness).

A I say this is very possible, because I indicated before Mr. Forest used the same kind of Social Security I did.

Q Would you look at the card, sir, and see whether or not the contents of that card refresh your recollection.

A This has a different name on it.

Q What name?

A Annette Lehman.

Q Do you see the number 534204836 on that card?

A I do not.

Q You do not. So that you don't see that number anywhere on that card?

A As a Social Security --

Q I didn't ask you Social Security. I asked you whether there was a number on that card.

A Repeat the number.

Q 534204836.

A Yes, it's on the right-hand bottom.

Q Is that number on that card?

A Yes, it is.

Q Now, sir, without me, what is the Social Security number on that card?

A 161-30,5848.

Q 161-30 --

A -5848.

Q Now, sir, I show you Government's Exhibit 1 in evidence (handing to witness). I ask you whether or not there is a check next to "Identification other than driver's license."

A It's checked "Driver's license and Social Security."

Q Have you at any time received from Mrs. Rogers a driver's license under any name?

A No, I haven't.

Q On the day that she cashed the one winning ticket that you know of, did she present a driver's license?

A No, she did not.

Q There's no question about it that when you presented the identification back for the winning ticket there was no driver's license?

A No.

Q There was an identification card?

A Yes.

Q And --

A Social Security card similar to this.

MR. BOBICK: No further questions --

Wait, just one or two.

Q Mr. Nelson, you told us procedure and you told us the procedure was there had to be a cashier behind Window No. 1 that day.

A Yes.

Q Sir, would you have any books or records or anything to indicate whether in fact there was a cashier at Window No. 1 on March 21?

A I think we can have records of it if you're saying Window 1 in fact was the window she cashed the ticket.

Q Yes, if Window 1 was the window that the payment was made and the tickets were cashed, would you have records to indicate that there was no cashier at Window No. 1 that day?

A Yes, we could; we can prove that.

Q Where are those records, sir?

A Those records would be on the daily job folders.

Q For March 21, 1973, and they're kept in the OTB office where you work?

A Correct.

Q Sir, on the day that you cashed the ticket, do you remember whether there was a cashier in Window No. 1?

A I think there was. I'm almost positive there was on 1.

Q But your records would be correct?

A Correct, would state yes or no.

Q Also, the ticket, when it is paid, would show what time that ticket was paid?

A It would show the time it was paid.

Q So that if we had the winning ticket that was cashed for that $1421.70, we would know not only the time but whether there was a cashier in Window 1 at the time that that window was --

A And which window it was at.

Q Which window it was cashed at.

A Yes.

Q Do you think you would be able to get those records tomorrow morning?

A I would have to go through it. Those records are probably in the warehouse.

Q Do you think you would be able to get it by tomorrow morning?

A I couldn't personally get it. I could try to request it.

Q Sir, are you positive that this was not the identification (indicating) card?

A To the best of my knowledge, that was not it.

Q It was a smaller card?

A The one that Constance showed me, that I saw, was a smaller one similar to the size of the Social Security card with the photograph.

Q And a fingerprint on the back?

A I didn't look at the back of it. I know the picture was in color.

Q Your recollection was that it was in color?

A Yes.

CROSS EXAMINATION

BY MR. MEYERSON:

Q Sir, you say you know the defendant as Connie?

A Yes.

Q The time, you remember her cashing one time, but you don't remember which day it was?

A Not the exact date.

Q You have days off; is that correct?

A Of course.

Q Your hours off during the day?

A It's pretty rough but we try to sneak out for a bite to eat.

Q Do you know on March 21 whether you were on duty?

A I have to check back.

Q You don't even remember?

A You know.

Q You knew her as Connie. If you received identification from her was the identification in the name of Constance Rogers?

A Yes, this is why I remembered the colored photograph in the upper right-hand corner.

Q Neither the Social Security card or the identification or a license or any other identification would be in the name of Annette Lehman; is that correct, because you knew her as Constance Rogers?

A Correct.

Q So, in fact, neither one of these could be the identification (handing to witness) because that's in the name of Annette Lehman; is that correct?

A Correct.

Q The identification that you saw was in the name of Connie Rogers; is that correct?

A It could have been Rogers.

Q But it was Connie something?

A Yes.

Q It was not Annette Lehman. This one only says Annette Lehman.

A (No response)

Q That 1099 form, which is Government's Exhibit No. 1, is that your handwriting?

A No, it's not.

Q So you didn't fill it out?

A No, I did not.

Q Do you hap -- Could you identify Roslin Friedman's signature? Have you seen it before?

A Yes; that's Roslin's handwriting.

Q That?

A Yes.

Q She did sign it? Even if it was a particular day that's the same as March 21, you say you went into the back. Now, if you went into the back then Roslin Friedman could have come out front to do the 1099; is that correct?

A Very possibly.

Q She would be able to identify the defendant and fill out the 1099 in the defendant's presence; is that correct?

A Yes.

Q In any case, the identification was with Constance and was not Annette Lehman identification; is that

correct?

A Not in the ticket I cashed for her.

MR. MEYERSON: No further questions.

Thank you very mucy.

REDIRECT EXAMINATION

BY MR. BOBICK:

Q Mr. Nelson, one question: Would you be able to find any ticket that was cashed by Constance Rogers under the name Constance Rogers for any amount?

A Pardon?

Q Or anyone -- would that require a 1099?

A Physical ticket? They send the tickets to Ticket Retention. What happens to those tickets afterwards, I couldn't tell.

Q Isn't it a fact if you remember the name Connie and if you remember that she cashed the ticket and if you remember there was a 1099 filled out, there has to be a 1099 with the name Constance Rogers or Constance something on it?

A Right.

Q All right. Do you think that anywhere you would be able to find such a 1099?

A Who would -- I don't keep copies of the 1099s.

Q Was there copies of the 1099s somewhere?

A The customer gets a copy. The other three parts of the 1099 form are sent down to Revenue Accounting.

Q It would stay with OTB, one copy?

A Yes.

Q In the OTB record, from March 29, there has to be a record of Constance Rogers or whatever you call her?

A Right.

Q There is. Now, you say there should be but you don't know if there is any from Constance Rogers, do you?

A From the ones that I filled out, if OTB records are up to par, they should have one.

Q At this point, you think that should be in the records of OTB?

A I would believe so.

MR. BOBICK: Your Honor, at this time I would further ask that that be done, that a search be made.

THE COURT: See what you can find.

MR. MEYERSON: Again, OTB is not in the Government's control.

THE COURT: You can call.

MR. MEYERSON: I will make a phone call. I suggest Mr. Bobick subpoena what he wants.

THE COURT: By the time he gets out a subpoena it will be too late. See what you can do at the next

recess.

THE COURT: Mr. Nelson, do you remember how much the ticket was for?

THE WITNESS: I don't.

MR. DOBICK: Does the number $ 421.70 refresh your recollection as to the ticket? Do you think it could have been that number?

MR. MEYERSON: Not "if."

THE COURT: Do you recall whether it was?

THE WITNESS: It's hard to say because they cash, you know, different amounts of tickets.

Q Could it be $1421.70?

A It could be any number.

Q But you remember a 1099 being filled out, no question about that?

A Correct.

Q You remember a 1099 being filled out for this defendant?

A Right.

Q Regardless of what the name, you say it wasn't Annette; you say Constance?

A Right.

Q You remember a 1099?

A Yes.

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Nelson-direct

Q A copy of that 1099 should be in OTB files?

A Yes.

THE COURT: Do you remember more than one time that she won enough for a 1099?

THE WITNESS: No.

MR. BOBICK: Your Honor, Mr. Meyerson says he would like to offer them in evidence.

MR. MEYERSON: The identifications, both as evidence.

MR. BOBICK: I have no objection, but I would like them to go in as defendant's evidence.

MR. MEYERSON: Fine.

THE COURT: You haven't offered them. If you do, I'll receive them.

MR. BOBICK: Then I'll offer them.

THE CLERK: Defendant's Exhibits B, C, and D marked in evidence.

(So marked)

*** THE COURT: You can step down. Be available tomorrow morning if we find the tickets.

THE WITNESS: Very well.

(Witness excused)

MR. BOBICK: Could I address one question to Mr. Nelson: Mr. Nelson, on the incident that you

remember, you're the one that paid her the money or you were there when the money was paid?

THE WITNESS: I believe I even signed the 1099 form, if I'm correct.

Q You were there when the money was paid. Mr. Nelson, do you remember any particular date? It's impossible to search the records over a five-month period.

A No, I don't. We were involved into that same OTB petition.

MR. MEYERSON: Thank you, sir.

THE COURT: Next witness.

MR. MEYERSON: The witness is not here, your Honor.

THE COURT: If she's not here, who is your next one, Mr. Bobick?

MR. BOBICK: Could we have a five-minute recess.

THE COURT: All right, we'll take a short recess. The jury is to go back to the jury room, and don't talk about the case.

(Jury leaves the courtroom.)

THE COURT: What's your next witness, Mr. Bobick?

MR. BOBICK: My next witness isn't here. It was Roslin Friedman. She hasn't returned yet.,

MR. MEYERSON: Your Honor, with Roslin Friedman, the defendant had ample time to cross her. Nothing has come out that would indicate anything else. I don't think that the Court should be taxed with waiting for a witness which is beyond the Government's control.

THE COURT: What do you expect to show through Mrs. Friedman?

MR. BOBICK: On her last time, your Honor, she identified -- the last question asked by Mr. Meyerson, the reason she remembered the Social Security card was because it was a metal Social Security card.

I'd like to at this point show her the Social Security card and be in a position to show if this is the Social Security card and that the number she copied was not the Social Security --

THE COURT: You don't need her to prove that. She copied the wrong number.

What would be your next witness after?

MR. BOBICK: At that point, your Honor -- Just one moment, please.

I would like to make an application. I know it's early, but I'd like to make an application to adjourn.

THE COURT: I'm not going to adjourn.

MR. BOBICK: Your Honor, the situation is, I would like to determine exactly what we're going to do. It would be for the benefit of all parties concerned if we could adjourn. I know we are cutting an hour off our schedule. I know. The point is that it may be beneficial in the long run.

MR. MEYERSON: The Covernment strenuously opposes it. The evidence came in. They had ample time. I told Mr. Bobick what the evidence would be before it even went in. He had the hearings and then he had the testimony. There were really no surprises. He had ample time to put forth witnesses. Miss Rogers is here should he wish her to take the stand.

MR. BOBICK: The question is, there is a lot of things to be discussed before we feel whether Miss Rogers is going to take the stand or not.

MR. MEYERSON: They knew that a long time. There are no surprises.

THE COURT: The witnesses you want are largely collateral.

MR. BOBICK: Except Mr. Pullman is not collateral. Mr. Pullman is not here.

MR. MEYERSON: That's not our fault.

MR. BOBICK: You said you would get him.

MR. MEYERSON: I said I would try. We did make the call and contacted him.

MR. BOBICK: You told me he was coming, you told me that today.

MR. MEYERSON: That's what he told us.

MR. BOBICK: You told me at lunchtime Mr. Pullman should have been down in the office.

MR. MEYERSON: Should have been here. He is not here. The Government did all it could do.

MR. BOBICK: I think it would be not only justice but to the benefit of the Court and the defendant to allow the adjournment at this time. It's an hour early. I apologize to the Court. I'll see it never happens again. At this point I'm stuck with it. I just can't proceed at this point. It's been a rapid trial, not as rapid --

MR. MEYERSON: If I may, each of these witnesses that I have in rebuttal depending upon what testimony comes in, has already lost several days' pay. To keep them here an extra day now, we are just really taxing them. I have already apologized many times to them for holding them as long as they are, but we did expect to be through today.

MR. BOBICK: If he brings down rebuttal witnesses, he certainly doesn't need them the first

day. If he brings down rebuttal witnesses, he doesn't need them until the second day. Besides, justice isn't supposed to be counted by the cost of the individual witnesses.

MR. MEYERSON: There's no surprises.

THE COURT: I think the defendant ought to know if she's going to testify or not.

MR. BOBICK: I think so. Being the other witnesses are not here and there is a lot of things to be discussed, I would like to go into it with another attorney in Pennsylvania. I think that by giving us an hour at this time is not going to suffer that greatly.

THE COURT: I'm sorry, but I have too many cases behind this to lose an hour this way.

MR. BOBICK: Your Honor, under the Luck decision, that if the defendant is called as a witness, that the prosecutor be restrained from asking about previous criminal convictions especially since there is no convictions involved with perjury.

THE COURT: The Luck decision is not binding in this circuit. I'm not going to follow it. That motion is denied.

MR. BOBICK: Your Honor, I regret to say you're forcing me into a position where as counsel

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to represent the best interests of my client, I'm going to be forced as attorney to bring before this Court another witness, and we're going to have a lot of stuff which is going to take more time.

THE COURT: That's all right. Bring your other witness.

MR. BOBICK: O.K. Seymour Rothstein.

THE COURT: Bring him in.

MR. MEYERSON: I have to call downstairs for him.

MR. BOBICK: Your Honor, the defendant advised me if you have --

THE COURT: Do you want Mr. Rothstein brought up?

MR. MEYERSON: Could I have a two-minute adjournment.

THE COURT: What is it?

MR. BOBICK: May we approach the side bar off the record.

THE COURT: Off the record.

(Discussion off the record.)

MR. MEYERSON: The Government consents to an adjournment until tomorrow morning.

THE COURT: Mr. Bobick, this is on the understanding that you're not going to call Mr. Rothstein.

MR. BOBICK: That's correct, your Honor.

THE COURT: Who is present in the courtroom.

MR. BOBICK: In the witness room.

THE COURT: In the witness room. That may economize time.

MR. BOBICK: For the purpose of economizing time.

THE COURT: You don't recall that you know of any information now that Mr. Rothstein could give that would exculpate Miss Rogers?

MR. BOBICK: Your Honor, I won't quite go that far, but I would say that Mr. Rothstein would be a collateral issue in this matter and not be necessary to the defense in chief.

At this point, your Honor, I felt that if we were required to call Mr. Rothstein, the time of the Court would be used to a greater extent than it would be by adjourning this matter.

THE COURT: We are getting into a lot of collateral matters now. I think the defendant is not prejudiced by your waiving what would be another collateral matter.

MR. BOBICK: Right.

THE COURT: We will bring in the jury and take a recess until tomorrow morning at ten o'clock.

MR. MEYERSON: You're willing to excuse Mrs. Friedman, Mike Sullivan and Sam Rosen?

THE COURT: Mrs.Friedman hasn't come.

MR. MEYERSON: He is willing not to have her come.

MR. BOBICK: I will give it to you, o.k. I'll give it to you. I won't go back on my word.

(The jury enters the jury box.)

THE COURT: Ladies and gentlemen, we have had some discussion and, as you heard, one witness that we were anticipating is not here and I think in the orderly process of the case, without wasting anybody's time, it's best we adjourn this afternoon, resume tomorrow morning at ten o'clock. We'll anticipate finishing the case and you may have to plan to stay until you reach an agreement. I hope we'll get to the point of summations and argument and deliberations tomorrow.

You have heard the Government's case, but you haven't heard what the defendant may have to say. Keep an open mind. Don't talk about the case amongst yourselves or in little groups or with anybody else, at home or elsewhere. If you meet any of the courtroom personnel, don't talk to them at all.

You're excused until ten o'clock tomorrow, morning.

(Time noted: 4:35 p.m.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- : 73-CR-906

CONSTANCE RODGERS, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

January 30, 1974
10:00 a.m.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

ILENE GINSBERG
ACTING OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, ESQ.,
United States Attorney
for the Eastern District of New York

BY: HAL MEYERSON, ESQ.,
Assistant United States Attorney

EDWARD BOBICK, ESQ.,
Attorney for the defendant

- - -

(Jury not present.)

THE CLERK: Criminal cause on trial, U.S.A. v. Connie Rogers.

MR. MEYERSON: Your Honor, Mr. Pullman is here. I'd like to request that the jury not be brought in when Mr. Pullman is brought in and that the Court advise him that he has the right to the Fifth Amendment. If he should take it, I do not believe that should be in the jury's presence.

THE COURT: All right. The jury isn't all here so we will hear from Mr. Pullman now.

You are contemplating calling him?

MR. BOBICK: I feel that he would be called, yes.

THE COURT: All right.

MR. MEYERSON: He should be outside.

(Pause.)

MR. MEYERSON: He will be up in a second.

THE COURT: All right.

Now, as I was going through my notes last night it appeared to me, Mr. Meyerson, you had not re-offered the relevant checks in Exhibits 8 and 9. I don't know if you intended to or not but there was some further testimony about those.

What do your records show on it, Mr. Giokas?

MR. MEYERSON: Those are the ones that were

submitted.

THE CLERK: They are still for identification.

MR. MEYERSON: I'd like them admitted in evidence if you would re-consider your ruling.

THE COURT: It is a matter of a better showing of relevance than before. It is not a matter of re-considering the ruling.

MR. BOBICK: Those were the checks --

THE COURT: That Mr. Shagan tied in. Maybe it was Mr. Nelson who tied them in with particular tickets.

MR. MEYERSON: I think, considering that the book with the check stubs has identified those numbered checks as being issued to Annette Lehman and Mary Grannum, I would re-offer them at this time.

THE COURT: No. It was Mr. Rosen, when re-called, who identified the checks.

MR. MEYERSON: Yes, by the check stub number.

THE COURT: You should have done it before you rested.

MR. MEYERSON: I am sorry, your Honor.

THE COURT: I think it would be appropriate now. Mr. Bobick, do you take any position on that?

MR. BOBICK. On the checks, your Honor?

THE COURT: Yes.

MR. BOBICK: We consent.

THE COURT: All right.

I think the particular checks that were numbered -- No, maybe Mr. Bobick asked also about the other checks which related to Grazziano -- let's have them all received in Evidence now.

MR. BOBICK: Right. All received.

THE CLERK: Government's Exhibits 8 and 9 marked in Evidence.

(So marked.)

THE COURT: While waiting for Mr. Pullman, maybe Mr. Bobick can tell me whether he has objection to the Government's request to charge on which I will have to rule at some point.

I keep getting the Hiss charge from the United States Attorney and I keep leaving out, "Otherwise we wouldn't be able to get convictions."

MR. MEYERSON: Your Honor, the branch checkbook with the stubs that identified the checks was never offered as evidence.

MR. BOBICK: Wait, wait, no --

THE COURT: I have the checkbook as being in evidence.

MR. BOBICK: That is the checkbook on rebuttal.

THE COURT: Maybe the book isn't that important if the checks are in.

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MR. BOBICK: That is not the correct book. That is your rebuttal checkbook. Those checks go with that book and that book goes with rebuttal.

MR. MEYERSON: Oh, you are right.

THE COURT: I have a question on your number two, Mr. Meyerson, as to whether I should charge this is a matter within the jurisdiction of a Governmental agency.

The Adler case was a non-jury trial and I don't think it is really decisive of that issue and I am inclined to leave it to the jury.

MR. BOBICK: I think it is for the jury as to whether or not this is a Governmental --

THE COURT: I think it is a clear question but I will hear Mr. Meyerson on it.

Why is it taking so long to get Mr. Pullman up here?

MR. MEYERSON: I don't know. He probably came up and didn't realize he should come into the courtroom. I will see if he is in the witness room.

(Pause.)

MR. MEYERSON: He is here.

THE COURT: All right.

Well, just let me cover number two and then we will go on.

What have you to say on that? The language in

Adler was not clear to me although it is described as an issue of law in the footnote.

MR. MEYERSON: Well, both cases do point it out and I also feel, your Honor, that a jury really wouldn't be cognizant of the revenue -- of the statutes and the provisions which give the Internal Revenue --

THE COURT: It is a matter of testimony.

MR. MEYERSON: I ask your Honor to take judicial notice of Title 26, United States Code, Section 6041, which provides that whenever there is a payout of $600 or more --

THE COURT: You are entitled to have me charge that.

MR. BOBICK: I have no objection to that being charged.

THE COURT: I don't like taking an essential element from the jury unless I have something clearer on it.

MR. BOBICK: I would object.

MR. MEYERSON: This is the Internal Revenue Service code and it would give them jurisdiction to do it, clearly.

THE COURT: Well, to submit it to OTB and not IRS and I am going to let the jury find it.

Let's bring in Mr. Pullman and we will have our first witness testify.

(Jury not present.)

THE COURT: Mr. Giokas, would you swear Mr. Pullman in, please.

THE CLERK: Raise your right hand, sir.

J O S E P H P U L L M A N , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name, sir.

THE WITNESS: Joseph Pullman, P-u-l-l-m-a-n.

THE COURT: Before any questions are asked of you, I thought I should point out that you are a defendant in United States v. Vario, et al, on for trial March 13.

You have not yet pled to the indictment and you have a right to exercise your Fifth Amendment privilege with respect to any questions that are asked of you and say you claim the right not to incriminate yourself. That is a matter of choice with you. You have a right to assistance of counsel if you want it.

Mr. Bobick has asked you come to testify for the defendant and I think it proper procedure to let him proceed with some of the proposed questions and you can see if you will answer.

I do not think you should be put in the position of your claiming privilege in front of the jury.

MR. MEYERSON: Besides the sports bribery, I assume,

9 the relevance of any questions -- and from the defendant's opening -- would be something that Mr. Pullman furnished phoney credit cards or phoney I.D.'s.

That is another case -- incriminating him -- having nothing to do with bribery.

THE COURT: All right, Mr. Bobick. You may proceed.

DIRECT EXAMINATION

BY MR. BOBICK:

Q On or about April 1st or 2nd, 1973, did you visit the defendant, Mrs. Connie Rogers at her home in Queens?

A April 1st or April 2nd?

Q Yes.

A I don't know the dates exactly.

Q At that time did you give --

THE COURT: Sometime near then, did you?

THE WITNESS: Well, yes.

Q You visited her home on many occasions?

A Yes, that is true.

Q In fact you knew her pretty well, didn't you?

A Yes, I did.

Q Did you ever have an automobile fixed for her at your expense?

MR. MEYERSON: I don't see the relevance to that question at all. Let him get to the main battle.

THE COURT: Don't start objecting to the first questions.

Q Did you have an automobile fixed for her at your expense?

A Yes, I did. She had trouble with it and asked me if I knew somebody who would fix it and I had it fixed for her.

Q Isn't it a fact that about April 1st, April 2nd, you brought over to her house a quantity of winning Superfecta tickets together with identification for one Mary Grannum?

THE WITNESS: Can I invoke this Fifth Amendment? I have no attorney and I am indicted and if this is another offense against me --

THE COURT: Who is your attorney?

THE WITNESS: I have none at this present time.

THE COURT: I anticipated you would have one by now. I think you should.

If you are not able to afford one you should ask the Court to appoint one.

However, Mr. Bobick, I think the witness has a right to invcke the privilege at this point.

You were claiming entrapment. You may want to ask some questions also about his prior relation, if any, with the Government. Suppose you do that.

MR. BOBICK: I'd like to.

THE COURT: All right, a few more questions on the record.

Q Two days afterward, on April 4, 1973, did you also bring back some winning Superfecta tickets and further identification or the same identification for one Mary Grannum?

A That is the same. I refuse to answer on the ground that it may tend to incriminate me.

THE COURT: You may claim the privilege.

Q Did you advise Mrs. Rogers that Mary D. Grannum was in the hospital and she was authorized to sign her name to cash those tickets for you?

A I refuse to answer on the grounds it may tend to incriminate me.

THE COURT: All right. He claims privilege on that, too.

I am not sure that it is a defense unless you prove something more -- whether that is a defense to the submission of tickets under a false name --

MR. BOBICK: But, your Honor --

THE COURT: Well, go ahead.

Q On April the 5th, 1973 were you in a Northern state, either Maine or Vermont?

A Possibly.

Q And at that time or prior to your leaving, did you give to Mrs. Rogers a series of Superfecta winning tickets, numbering 72 in number?

A I refuse to answer on the grounds it may tend to incriminate me.

Q Did you tell Mrs. Rogers to cash those tickets for you?

A I refuse to answer on the grounds it may tend to incriminate me.

Q Now, Mr. Pullman, what is your business or occupation?

A A trailer driver. I drive a truck.

Q When is the last time you drove a truck?

A Two days ago.

Q Have you ever been convicted of a crime?

A Yes, I believe so.

Q How many times have you been convicted of a crime?

A I believe twice.

MR. MEYERSON: Your Honor, there is no relevance to this. He is now trying to impeach a witness --

MR. BOBICK: Except we are going to attempt to show why he became a Government informer.

THE COURT: Ask if he did and if so, when.

MR. MEYERSON: If so, when did he talk to --

MR. BOBICK: May I ask the questions in the order I choose?

THE COURT: Proceed, Mr. Bobick.

Q Do you ever hang around the racetrack?

A Quite frequently.

Q Have you hung around the track on many occasions for a long period of time?

A What do you mean by "many occasions" and "a long period of time"?

If I had money I'd be at the racetrack. If I didn't, I wouldn't be there.

Q Did you go to the racetrack while you were on welfare?

A While I was on welfare?

Q While your family was on welfare?

A I don't think so -- possibly -- but I don't think so.

It is possible a friend asked me to go down and I had gone with him.

Q In the course of your hanging around the racetrack did you ever bet on Superfectas?

A Now, what racetrack are you referring to?

Q Let's start with Monticello.

Ever bet on the Superfecta in Monticello?

MR. MEYERSON: I don't see the relevance.

THE COURT: I will allow it.

A Did I wager on them? Yes.

Q Were you in Monticello, New York during the running of various Superfectas in December or January of 1972?

A Yes.

Q January '73 -- did you partake in the Superfecta winnings in December 1972 or January of 1973?

A No.

MR. MEYERSON: I don't understand that question --

THE WITNESS: No, definitely not.

THE COURT: The witness did. That's allowed.

A (Continuing) I was at the track and I am one of these guys like a hawk -- you follow different people --

Q What do you mean "hawk"?

A If you own a horse and you are with a certain driver and he is in the race, I'm going to bet with you.

If the driver's got a girlfriend, I want to follow the girlfriend.

Q To see what they do?

A Certainly -- even to bet against.

Q When is the first time you met with Federal Agents concerning the Superfecta investigation?

A Concerning the Superfecta investigation?

Q Yes.

A After when we went to the Grand Jury.

Q Did you go before a Grand Jury?

A Yes.

Q Did you testify?

A Did I testify in the Grand Jury?

Q Yes.

A Yes.

Q When was the first time that you testified in the Grand Jury?

A I don't remember the exact date but whatever date.

THE COURT: Have you the date, Mr. Meyerson?

MR. MEYERSON: I think it was June 7th.

MR. BOBICK: Was that the first?

MR. MEYERSON: I believe it was approximately June 7 when the defendant first testified.

THE COURT: He is a witness right here.

MR. BOBICK: He is a witness now.

MR. MEYERSON: He may have taken --

THE COURT: Have you any 302's for him, before April 1?

MR. MEYERSON: Definitely not. Before the dates in question, April 2 and April 4, definitely not.

THE COURT: You may continue your questioning.

Q Were you questioned by the FBI concerning Monticello's Superfecta races in December and January, 1972 and 1973?

A December or January, 1973?

Q Concerning the Superfecta races during those times?

A '72 or '73?

Q December, 1972 --

A The only thing I had dealings with was the Grand Jury. That is the only time. I don't know the dates. You have the dates.

THE COURT: Mr. Bobick, 1972 and 1973 --

THE WITNESS: 1972, never.

Q Did you ever tell anyone that you were a Government informer working with Government authorities during the -- I forget the name -- what was the racetrack -- Monticello, yes, Monticello, during the Monticello investigation in December 1972 and January 1973?

A Did I what?

MR. MEYERSON: I don't understand the relevance.

THE COURT: The question, as I understand it, is whether Mr. Pullman ever told anybody that he was working on a Government investigation of Monticello racetrack during December of 1972 or January 1973.

THE WITNESS: Definitely not.

Q Subsequent to December of 1972 and January of 1973 and prior to April of 1973 --

A Wait, wait.

Q Subsequent means after --

A I realize that.

Q After December, 1972 --

A I don't know the dates. They are years apart.

Q They are four or five months apart.

THE COURT: Do you want to look at a 1972 calendar?

THE WITNESS: Yes, that would be --

THE COURT: Here it is.

(Document handed to witness.)

(Pause.)

Q Are you ready?

THE COURT: Go ahead.

Q After December of 1972 and after January of 1973-- by the way --

MR. BOBICK: Withdrawn.

Q (Continuing) What is the racing season for Monticello during that period?

A What is the racing season?

Q Yes.

A I assume it is a couple of months. I am only

making an assumption. I don't know the exact dates.

Q Were you in Monticello during December 1972 and January 1973?

A At the meetings in Monticello, I was there in 1972 and also in 1973.

Q When was the meeting in Monticello in 1972 and 1973?

A They have it early and they have it late.

Q When?

A I don't know what the dates are but I know I am there at the end of 1972 or 1973. I forget what date.

Q Was the Monticello Racetrack open in January of 1973?

A In January of '73, I believe it was. I am not certain of the dates. You have the dates. I don't know what the dates are. I can't just name you different tracks, when they open or close. I just don't know.

Now, I was there at that meet --

Q Were you there in Monticello with one David Craft?

A Where?

Q Monticello -- do you know David Craft?

A Yes.

Q Were you at the Monticello track in December,

1972 and January, 1973 with one David Craft?

A Was I at the racetrack? Did I go to the racetrack with him or meet him there? Did I see him?

THE COURT: Either way.

A (Continuing) I have never gone to a racetrack in Monticello, ever, from my home or his home. I have seen him there, maybe once; one time I had seen him there.

Q Did you work with David Craft in December, 1972 or December, 1973?

THE COURT: January, 1973.

MR. BOBICK: Sorry.

Q (Continuing) January, 1973?

A Did I work with him? What do you mean"by work with him"?

Q Were you engaged in a business enterprise, whether formal or informal?

MR. MEYERSON: I don't understand.

THE COURT: I think it is leading up. I will permit it.

THE WITNESS: I don't understand the question.

THE COURT: Did you have any business dealings with David Craft during this period?

A You are talking about December?

Q 1972.

A Or January --

Q 1973.

A Did I have any business dealings --

Q Well, financial dealings?

A What do you mean by "financial"?

Q Did you and David Craft involve in something where money was made or used or exchanged or betted or collected or spent --

MR. MEYERSON: Your Honor --

A In other words, if I went $10 apiece with him and bet $20 on a horse, that is a financial venture in your estimate?

Q Yes.

MR. MEYERSON: Objection.

THE COURT: Overruled.

A No, I don't think I did. I knew him as an owner, that's all.

Q When did you start your financial dealings with David Craft?

A What do you mean "financial"?

Q Just like you said -- something to do with money.

A When did I first start my financial dealings with Craft?

Q Yes. When was the first financial transaction

you had with David Craft at any time?

A One day at Freehold, I think -- I don't know the date. I know it wa: 1973 sometime.

Q What month?

A One of the months -- I don't know what month -- during their meet, sometime.

Q When?

A He come in. We bet $50 apiece on a horse. We bet a hundred dollars.

Q That was your first transaction with Craft?

A Yes.

Q Subsequent to that did you have transactions with David Craft?

A Subsequent to that did I have transactions with David Craft? Yes.

Q Many transactions with David Craft?

A Yes.

Q Involving large sums of money?

A Occasionally.

Q How large were the sums of money?

A It varied; a couple of hundred or a few thousand.

THE COURT: What has this to do --

Q Were these transactions involved with Superfectas?

A I refuse to answer that question on the grounds

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that it may tend to incriminate me.

THE COURT: He pled the Fifth on that and I will sustain it.

You are preliminarily concerned with a date, I think.

MR. BOBICK: I am trying.

MR. MEYERSON: I still don't understand the relevance of any of the other matters to any kind of furnishing of any kind of identification or anything to do with this case.

Your Honor, this examination is not a discovery device --

THE COURT: Objection overruled.

Go ahead.

MR. BOBICK: Am I entitled to use this witness --

THE COURT: You are not entitled to use this as a pre-trial in the Vario case but you are entitled to use it to prove whether he was a Government agent.

Next question.

BY MR. BOBICK:

Q When was the first time that you had a business transaction with David Craft; what date?

A Well, like I say, we went $50 apiece on a horse sometime during the Freehold meet.

THE COURT: Do you know when the Freehold meet was, Mr. Meyerson?

MR. MEYERSON: No.

THE COURT: Do you, Mr. Bobick?

MR. BOBICK: No, I am sorry, your Honor. It is not my --

THE WITNESS: The summertime sometime.

Q Of 1973?

A Yes.

Q After April of 1973?

A Yeah, it was the summertime so after April.

Q And so, you are sure that it was in the summer of 1973 that you and David Craft got together on Superfecta betting?

A No, not Superfecta.

You told me a financial thing. You told me it was like a bet. So, one day he walked in the track. He gave me $50 to bet on his horse. I put up $50 and we bet a hundred dollars. The horse lost.

Q Did you have financial dealings with David Craft involving Superfecta betting?

A When?

Q At any time?

A Yes. What was it -- late '73, early '74.

Q So that you bet with David Craft on Superfecta in 1973 -- late?

A Late.

Q Were these Superfectas running at certain race-tracks?

A New York.

Q Which tracks?

A Yonkers and Roosevelt.

Q And you say that it was after the summer of 1973 that you bet on Superfectas at Roosevelt and Yonkers?

A Yonkers and Roosevelt, yes.

MR. MEYERSON: I think there is a confusion --

MR. BOBICK: Yes, but not in the presence of the witness.

May we have a sidebar?

THE COURT: All right.

(Sidebar discussion.)

THE COURT: Don't try to coach a witness while on the stand.

MR. BOBICK: There hasn't been a Superfecta race since April 1973.

THE COURT: I know it.

MR.BOBICK: So, there is a mistake with the witness or a denial.

He was with Craft on Superfecta and he had to be sometime prior to April, the date involved here.

THE COURT: When did they end -- in May?

MR. MEYERSON: They ended in April of 1973 and the questions are to 1973.

THE COURT: What has that to do with entrapment?

MR. BOBICK: If him and Craft were working together on Superfecta it had to be prior to April 1973 and they had to be working with the Government. But first I have to find out when he bet Superfecta.

THE COURT: Obviously, before April.

MR. BOBICK: I have to get the truth as to when he did it.

THE COURT: Don't waste time. Ask him if he was working with Craft for the Government.

MR. MEYERSON: He never spoke with the Government before June, 1973.

(Conclusion of sidebar discussion.)

BY MR. BOBICK:

Q Mr. Pullman, you are aware, are you not, that Superfecta was abolished or stopped in April 1973?

A April of 1973? Was it 1973? All right. Go ahead. No, I don't know the dates. The dates are just confusing to me.

Q But you said that you and Craft got together in Freehold in the summer of 1973 --

A That would have to be 1972 then.

THE COURT: Freehold isn't in New York.

MR. BOBICK: Jersey, but they were abolished anyway.

THE WITNESS: April. All right.

I am confused on dates. It is impossible to remember dates.

Q Could you be confused as to the date you first met or talked to the FBI?

A No, I am not confused on that.

The first time I run into them was at the Grand Jury.

Q You never spoke to any Government agents concerning your assistance with the Monticello racing --

A Definitely not --

Q (Continuing) -- prior to that time?

A No.

Q Did you ever tell anybody you were working with the Government as an agent on the Monticello investigation?

A How could I tell anybody --

THE COURT: You could, even if it wasn't true. Did you?

THE WITNESS: No.

Q When did you first start working with David Craft?

A As far as what? What capacity?

Q When was the first time you started working with David Craft any time, in any capacity?

A Financial now or --

Q Any way you want to call it.

A We started betting the Superfecta.

Q When did you start betting with David Craft on the Superfecta?

A When Yonkers opened -- when the Yonkers meet opened. I don't know if it was January, February, December.

Q You don't remember when the Yonkers meet opened?

A No.

Q And you were betting with David Craft on Superfecta?

A Yes.

Q Were you partners with David Craft?

A Yes.

Q Now, did David Craft, or did you tell David Craft you were working with the Government on the investigation of the Monticello Superfectas?

A Definitely not.

Q Never?

A Never.

Q Did you ever tell anybody else?

A Definitely not.

Q Did you ever receive any pay or favors from the United States Government because of your activity in the Monticello Superfectas?

A Definitely not.

Q Never received any money?

A Definitely not.

Q Do you have any case pending against you at the present time?

A I am part of the indictment.

Q Besides that.

A Other than that, no.

Q Did you ever have any cases pending against you in December, 1972 or the beginning of January, 1973?

MR. MEYERSON: Your Honor --

THE COURT: Let him answer.

A No, definitely. I don't believe I had.

Q No cases open and no cases pending?

A No.

Q How about in February of 1973?

A February 1973? No.

Q And in March 1973?

A No.

MR. BOBICK: No further questions.

THE COURT: All right.

Now, do you want Mr. Pullman to be sworn in the presence of the jury as a witness?

MR. BOBICK: Yes, your Honor.

MR. MEYERSON: If he is going to take the Fifth Amendment concerning anything relative to this I don't think the jury should hear.

THE COURT: That's up to Mr. Bobick.

Any prejudice may be to the defendant and the defendant may, as a matter of tactics, think there is some advantage.

I will permit the questions and rule on the questions as they come.

MR. BOBICK: Could we excuse Mr. Pullman at this time and I will call him later on?

THE COURT: All right.

Can you stay in the witness room next door?

THE WITNESS: Certainly.

THE COURT: Is there anyone else in there?

MR. MEYERSON: Yes. I will try to have them separated.

THE COURT: Maybe Mr. Geneturco can take him to an appropriate place.

Bring in the jury, please.

30 (The jury entered the jury box at 10:40 a.m.)

THE COURT: Good morning, ladies and gentlemen. Thank you for your patience. There are a lot of problems in a case like this and we have had some things that had to be done before you came in.

Mr. Bobick, have you another witness to call?

MR. BOBICK: Yes.

At this time the defense calls Constance Annette Rodgers to the stand.

THE COURT: Will you stand there a moment.

Mr. Giokas?

THE CLERK: Raise your right hand, please.

C O N S T A N C E R O D G E R S , having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Constance Rodgers, with a "D".

THE COURT: Be seated, please.

DIRECT EXAMINATION

BY MR. BOBICK:

Q Mrs. Rodgers, would you keep your voice up so I can hear you back here and the jury can hear you here?

A I will try.

Q You will have to speak louder than that.

A I will try harder.

Q Are you the defendant in this case?

A Yes, I am.

Q Mrs. Rodgers, where were you born?

A Pennsylvania.

Q Are you at the present time married?

A No, I am not. I am divorced.

Q Were you married before?

A Yes. I was first married in 1958 to a Donald Lehman. It was a very short marriage. We had a stillborn child, got the divorce in early 1960.

Q I can't hear you. Keep your voice up. Speak louder.

A We got the divorce in early 1960.

Q Were you subsequently married again?

A Yes, I was in the summer of 1960, to a Ted Rodgers, again, with a "D".

Q Also in Pennsylvania?

A Yes.

Q As a result of that marriage did you have any children?

A One daughter, 11 years old.

Q Where did she reside?

A With my parents in Pennsylvania.

Q Are you still married to Ted Rodgers?

A No. I was divorced in early 1967.

Q Now, what kind of work have you done or have you worked?

A Mainly as a waitress; cocktail waitress, food waitress, some sales and odd things but mainly a waitress.

Q Were you working as a waitress prior to this trial?

A Yes, I was.

Q Are you working as a waitress now?

A Not at the present time.

Q For whom did you work prior to this trial as a waitress?

A Nicholas Brothers in Queens; Sage Diner.

Q On Queens Boulevard?

A Yes.

Q Other than being a waitress in Pennsylvania -- going back to your beginnings -- other than being a waitress, did you go into any other business endeavors?

A I attempted a business of book distributorship. I supplied books to news agencies in the area, Allentown, Harristown. They distributed to smaller stores.

The material was considered adult literature. In the end I was getting into comic books also, to distribute to some of the agencies.

Q Have you ever been arrested or convicted of a

crime?

A I was arrested as a result of that business.

Q For what?

A I was arrested and charged with sale and possession of pornography and sale and possession of amphetamines.

Q What happened to that case?

A At this time it is pending in the State Supreme Court in Pennsylvania. They just unanimously voted to review my whole case.

Q You were convicted of that crime?

A Yes, I was convicted.

Q Other than that arrest and conviction were you ever convicted of any other crime?

A No.

Q Did you yourself possess amphetamines?

A No.

Q Did you sell or possess obscenity?

A If you want to call what I had obscenity I had it, but that is being reviewed at this time also.

Q Would you describe what Pennsylvania describes as obscenity?

A It is what they sell on the streets of New York, on 42nd Street or anyplace along there where you can buy that type of material.

Q Is that case presently pending before the Supreme Court of Pennsylvania?

A The State Supreme Court, yes.

Q Other than that one arrest and conviction have you ever been arrested or convicted of any other crime?

A No, I have not, other than right here. I have been indicted.

Q Now, Mrs. Rodgers, when did you come to New York?

A Right after all the convictions. With all the notoriety, with my family, I decided to leave. It was hard on my daughter.

Forrest Gerry, he was my boyfriend. We decided to take an apartment in Queens and that's when I came to New York.

Q Did you come to New York -- what name did you use when you came to New York?

A I took the apartment under the name of Connie Rodgers but I got an identification under Annette Lehman, Annette my middle name and Lehman my first married name, to re-establish credit for myself in New York.

As a result of my second marriage in Pennsylvania I couldn't get credit. If I wanted to borrow money or get money in Pennsylvania my parents had to take the loan out for me.

Q By the way, what does Forrest Gerry do?

A He buys and sells horses; what they call a horse

broker.

Q Was he also a trotting driver?

A Yes, he was, at one time, yes.

Q How about a handicapper?

A He is known, not only to me or Barney, but to everybody as one of the most astute handicappers --

MR. MEYERSON: As far as being astute, objection.

THE COURT: Sustained.

Q What is a handicapper?

THE COURT: Objection sustained to this line, Mr. Bobick.

MR. BOBICK: I just want to know what a handicapper is.

THE COURT: Your curiosity can be satisfied but not in the course of the trial.

MR.BOBICK: Oh, I know what it is.

(Continued on next page.)

Q Did there come a time when Forrest Gerry and yourself began to bet on horses?

A From the day I met him I think we were betting on horses.

Q Betting on trotting horses?

THE COURT: I suppose I should let you ask the questions about handicapping under the circumstances.

Q The Judge said you can answer. What is a handicapper?

A It is Forrest Gerry in my estimation.

Q What is it?

A It is hard for me to explain.

Handicapping is picking -- if there are eight horses in a race, it is trying to pick the winner of a race and by this you are handicapping a race.

Q And then did Forrest Gerry bet on horses?

A Yes, he did.

Q And did you bet on horses?

A Yes, I did.

Q Now, did there come a time when Superfecta came into New York State?

A Yes.

Q Do you know what a Superfecta is?

A Yes, Ho.

Q What is a Superfecta?

A Well, generally, it consists of eight horses and the Superfecta -- you have to pick the horses to finish first, second, third and fourth in a certain order.

The ticket will cost you two dollars at one racetrack or three dollars at another racetrack.

Q It means picking the first four horses who win in order of their finish?

A Yes.

Q Did you ever win -- win a Superfecta?

A Yes, I did.

I won at Yonkers Raceway and I won -- I don't know if it was Roosevelt or Yonkers because I cashed the ticket at OTB.

Q Other than the two times you told us about, did you ever cash winning tickets on Superfectas?

A Yes, I did.

Q Would you tell us, on March 21, 1973, did you cash a winning ticket on Superfecta?

A Yes, I did.

I had, the prior night -- I had won the Superfecta. It paid 1400 some-odd dollars and at that time I had lost my identification; my Connie Rodgers -- Constance Rodgers identification but I knew the important part of going to cash your

ticket was your Social Security number and I had the old I.D. with the Annette Lehman number on it.

Q I show you Defendant's Exhibit C in Evidence and I ask you if that is the identification you are referring to.

A Yes, it is. That's mine.

Q I also give you at this time, Defendant's Exhibit D in Evidence.

(Document handed to witness.)

A Yes, that is mine, also.

Q All right.

Would you look at the picture on Defendant's D in Evidence and tell us, do you know when that picture was taken?

A I certainly do. It was taken at the Copacabana in 1968 or 1969; in that area.

Q Tell us what happened on March 21, 1973.

A Well, I took this identification and my winning ticket and went to the OTB branch on Queens Boulevard. I don't know the branch number. It was the branch where Phil Nelson worked and I went in and on that day Phil was sitting at a card table as you enter the door, doing some promotions on helping OTB not to be stopped up in Albany; something in that order.

I went to Phil -- now Phil knew me as Connie Rodgers. He said, "Hello, Connie"; greeted me as Connie and I

told him I had lost my other identification.

I explained to him this was my identification; it was my name, my Social Security number.

"Would you please cash the ticket," and he said, "Of course, we will."

From there he took the ticket and I.D. and I told him at that time I would like to walk next door to Castro. There was a sofa there I had inquired about as far as price and everything but wasn't gone too long and I came back and Phil called me over. He was in Cage Window No. 1. He called me over there by himself; asked me to sign the form. I signed the form, received the cash. That was the end of the transaction.

Q Now, did you give --

MR. BOBICK: Withdrawn.

Q (Continuing) At that time did you see Rosalind Friedman?

A I never saw Rosalind Friedman that day.

Q Did you know her at all?

A I had seen her in there. I knew in some capacity she worked in the place. We were in there every day or every other day. Of course I knew her. I knew, by face, most all the tellers in there, but not by name.

Q Did you ever fill out a 1099 at any time in that

OTB office other than the one on March 21, 1973?

A No, I did not.

Q This is the only 1099 that you filled out?

A This is the only one.

Q Well, on this -- referring to Government's Exhibit 1 -- appears a Social Security No. 534 20 4836.

What is your Social Security number?

A On this card here?

Q What is your Social Security number on anything?

A 161 30 5848 and it appears on the card here.

Q Well, does the number 534 20 4836 appear on that card?

A Yes, it does.

Q Can I see that card, please?

(Document handed to counsel by witness.)

Q (Continuing) What is that number you just read?

A A serial number in a combination safe that I had.

There is also another number on there. It is also to a combination safe which I still possess.

Q Well, is the Social Security No. 161 30 5848 your Social Security number?

A Yes.

Q Does it appear on this card?

A Yes.

Q Is this the card that you gave?

A Yes.

MR. BOBICK: At this time I'd like to present Government's Exhibits 1 and Defendant's Exhibit C to the jury.

THE COURT: Pass them around and continue the questioning until some juror holds up his or her hand and asks you to desist.

(Documents passed to jurors.)

Q Now, did you hear Mrs. Friedman testify that the people in the OTB office knew you as Annette?

A Yes, I did.

Q Did they know you as Annette?

A No, they didn't.

Q Did anybody ever call you Annette?

A I think only, really, a few people knew my name of which Phil was one and he knew me as Connie.

Q You were not known in that OTB office as Annette?

A Not to my knowledge unless they assumed from the card that I am Annette, which is my name.

Q But did anyone ever call you Annette?

A No.

Q Now, Mrs. Rodgers, at the time that you left that

office and you took the money, had you ever won any other tickets from that office?

A No, I didn't -- had I ever won any tickets from that office? No.

Q Had you ever filled out a 1099 in that office for any other winnings or races?

A No.

MR. BOBICK: When Mr. Nelson testified yesterday we asked them to bring forth any other winning records they had.

Do you have them, sir?

MR. MEYERSON: May we approach the bench?

THE COURT: Yes.

(Sidebar discussion.)

MR. MEYERSON: I don't know what he is talking about.

MR. BOBICK: When Mr. Nelson was here yesterday he testified that she collected a 1099 -- that she filled out a 1099.

He identified it as a piece of identification and a Social Security card and then the Judge ordered, specifically asked him to search the records to find out if they had such a winning 1099 for Connie Rodgers.

MR. MEYERSON: I got a call from Mr. Nelson this

morning and he said any such records -- he doesn't have them.

Now, I called OTB Central Office and they informed me that there is no record to say whether it is there or not; that a search would be made that would require at least eight or ten hours of searching every 1099 in the file and we don't know the period because Phil Nelson, he said he didn't remember a date. There is no way of determining whether there are or not.

THE COURT: All right.

(Conclusion of sidebar discussion.)

BY MR. BOBICK:

Q Mrs. Rodgers, had you ever won and collected or filled out any 1099 from that office other than the one on March 21, 1973?

A No, I did not.

Q Now, did you give them, with that Social Security plate, an identification card?

A Yes.

Q Did you ever give them a driver's license in the name of Annette Lehman?

A No.

Q Did you ever have a driver's license in the name of Annette Lehman?

A Not more than in Pennsylvania as Constance Annette Lehman when I was married to Mr. Lehman.

Q Did you have that license subsequent to that?

A No. Excuse me?

Q Did you have that license after you left Pennsylvania?

A I don't think so.

Q In any event, when you gave two pieces of paper or two things to Mr. Nelson what did you give him?

A This identification card (indicating) and the Social Security card.

Q Did you ever have an identification card of a similar nature or smaller, where your picture appeared in color?

A No.

MR. BOBICK: At this time I'd like to show Exhibit D to the jury, which is in Evidence.

THE COURT: I thought it had gone -- all right, show it.

(Document passed to jurors.)

Q Now, Mrs. Rodgers, other than the two occasions that you told us you won -- that is the occasion of December -- at Yonkers Racetrack when you cashed a Superfecta at the track -- what name did you use?

A Connie Rodgers.

Q Other than the Superfecta you cashed at the track and the Superfecta you cashed at Office No. 22 or 29, whatever it was, on March 21, did you ever cash any other tickets?

A Yes, I did.

Q Would you tell us when was the next time that you cashed Superfecta tickets?

A April 2, April 4 and April 5.

Q April 2, April 4 and April 5?

A Yes.

Q Addressing your attention to opril 2nd --

A Yes.

Q (Continuing) -- 1973, would you tell us what happened at that time?

A Well, the evening before Mr. Joseph Pullman also known as the The Bear -- I will probably call him The Bear -- came to our apartment in the early evening, he asked me -- it wasn't just this conversation -- he was a friend of curs and he had always been a friend of ours --

Q How long did you know Joseph Pullman?

A I personally knew him maybe five, six years and Forrest Gerry has known him a lot longer. That's how I got to know The Bear, through Mr. Gerry.

Q And did Mr. Pullman ever come to your house to

eat?

A Often. He came to our place for meals, conversation. There was times he brought meals to the house. It was always a very friendly aire.

If we went to the track and met him we went to dinner afterwards. He was considered a friend.

Q What happened April 1st or 2nd?

A The evening of April 1st which was a Sunday evening, he came to our home or my apartment and he asked me if I would do him a favor. I said, "If I can."

He got a bunch of tickets, Superfecta tickets and some I.D. and handed them to me and I said, "What's this?"

He said, "This is my girlfriend, Mary Grannum's. She is in the hospital right now. Would you take these tickets for her and have them cashed. She asked for them to be cashed. She asked me. I can't do it. I have too many other things to do tomorrow. Would you do it for me?"

The I.D., along with it contained a driver's license, a Social Security card and a birth certificate and it isn't many people that have birth certificates along with their I.D.'s. So, I believed him --

Q Did he tell you where to go?

A Yes. He said I should go into Broadway, 1500, whatever it is, in Manhattan, the big office, main office, and

ask for Sam in there.

Q Had you ever seen Sam before?

A No.

Q Had you ever had transactions at 1501 Broadway before?

A No.

Q Had you ever gone there before?

A No, I have not.

Q Tell us what happened then?

A I proceeded to go in the next day.

I walked into the OTB branch and went directly to the rear and I went over to a teller and asked him if Sam was there and could I please see him.

The teller said, "Yes. I will call him. Go stand over by the door."

So, I went and stood and waited by the door.

At that time there was another casual racetrack friend there, Seymour Rothstein. I held a conversation with him and told him why I was there. I didn't feel I was doing anything wrong at the time.

So, Sam eventually came out. First I spoke to him, "Can you cash these tickets for me?"

He said, "I am busy right now. You will have to wait but I will accommodate you as soon as I can." And he took the

I.D. and tickets and went to the back.

Q Did you tell him you were sent by The Bear?

A Not at that particular moment. He was busy and in a rush to get away.

In a little while he came out again. There was a woman standing over by one of the windows with her back to me. I never saw her face. She was reading.

He took that woman and escorted her right out of the OTB branch.

He came back in. He said to Seymour, "I will be with you in a minute." He looked at me and said, "I am sorry to keep you waiting."

He went into the back, came back, said to Seymour, "O.K. let's go up to the bank," and they went to the bank.

He came back and said, "I will be with you in just a few minutes."

He went into the rear again. The next time I saw him he appeared back in the cage at the end of the window where he comes out of his office.

He motioned me over. I went over. He said, "Here is a 1099. It has to be signed and here is your I.D." and I said, "Sam, this isn't my I.D. The Bear sent me here today and asked me to get this cashed for his girlfriend who is hospitalized. At this time if you want me to I will sign my

name to it, which I would prefer."

He said, "Oh, no. That is against office procedure. I couldn't have you sign it. You just sign Mary Grannum's name. I am sure it's all right."

I signed it. He said, "I will have the check in a few minutes."

He went in the back, came out and said, "O.K., Connie. Let's go upstairs and get your money."

We went upstairs. He took the checks; he had them O.K.'d by a teller, came back and gave me the checks.

I got in line, went to the window and got the cash and that was the end of the transaction that day.

(Continued on next page.)

Q Now, did you tell him that you were not Mary Grannum?

A I did.

Q Did you tell him that you were sent there with the winning ticket by The Bear?

A Yes.

Q Did you refer to The Bear as Mr. Pullman or did you refer to him as The Bear?

A I possibly could have said both. Everybody refers -- you say Mr. Pullman to someone who knows him well and they say, "Who?" and you say, "The Bear," and they say, "Oh."

So, I might have said Mr. Pullman or The Bear; I don't know.

Q What did you do with the money you got?

A I gave it to Mr. Pullman along with the I.D. that evening at the racetrack.

Q Did you receive any money for that transaction?

A No. It was only a favor I'd done for the man.

Q Did Mr. Pullman say anything about it?

A He thanked me and he was sure Mary would be grateful I'd done it for her.

Q What about April 4?

A It was just about the same incident. He came

to my apartment in the early morning with the same I.D., again with tickets.

He said, "Mary is still hospitalized. I have to arrange to get a station wagon for Forrest and I to drive to Maine tonight. There is no way I can get it done. Will you do me the favor?"

I said, "Yes, I will do the favor."

I commenced to do the same favor; same procedure as before except I didn't see anybody in there I knew that day other than Sam.

Q Other than the two days that you were in that OTB office, April 2nd and April 4th, had you ever been to that office before?

A No.

Q Had you ever been there on April 3?

A No.

Q Were you there at any time after April 4?

A No -- excuse me -- the only reason I ever went there in the first place was because The Bear told me to go there and ask for Sam and, "You can get it instantly upstairs at the Chemical Bank." That's why he told me to go to the place.

I never cashed tickets in large sums of money.

Q What happened April 4? Did you give the money

to Mr. Pullman?

A I gave the money to Mr. Pullman -- let's see -- in the early afternoon -- late afternoon -- about 5. In the area of 5 o'clock he came back to the apartment. I gave him the money and the identification.

Q Now, did anything happen on April 5?

A Yes.

Q You said that you cashed tickets on April 2, April 4 and April 5?

A Well, on that particular day, on the 4th when I gave him back the money and the I.D. he said he had a lot of betting to do. He doesn't think he can get it done by himself. Will I help. I have helped him many times to make the bets at the OTB office.

Q I don't understand. What do you mean you helped him make bets?

A I helped him; Forrest --

Q Tell me what you did.

A The betting can consist of sometimes a hundred tickets, sometimes only 50 tickets, sometimes 200 hundred tickets. It depends if you want to bet $2 or $3 tickets, whichever track it was at -- 12 or 18 key boxes --

Q I am afraid you are losing me. Talk slower please and tell me what is a key box?

A Key box is when you take -- it's about a year and I may be a little muddy on this -- you put one horse on top and the other three horses are boxed underneath.

They can come in any order but the one horse has to win.

If I remember correctly, that's what's called a key box; a 72 or $48 box. It depends which track. There are different prices for the Superfectas.

It's when four horses are boxed.

It's easy to buy the 72 tickets. You have to punch them 10 times. But if you want to buy $3 tickets, not combinations, you have got to punch a $3 ticket one at a time, 100 tickets, 200 tickets, to spend the same amount you spent on the box ten times. It all depends whether you wanted to buy small tickets like that or you were playing the boxes or key boxes.

Q What happened on April 4 concerning the tickets that you bought?

A Bear said he had a lot of tickets to be bought and would I help and I offered to go along and help him.

There was a branch where I knew Ray Hilliard, the manager, they were nice and accommodated and would help us get the tickets punched out as fast as possible.

Q In large quantities?

A Yes.

Q Did you and Bear or by yourself or you, Bear and

somebody else -- How did you buy the tickets?

A That particular day?

Q Yes.

A Bear and I went over there. I don't know if Mr. Hilliard was there that day or not or Joan was working.

They accommodated us, opened different windows for us where other customers had not been.

We got in line, gave the selections and I believe some money at the time, to secure the bets or in part. We were known to these people and they -- the purpose of leaving some money at that time was Bear was afraid he wouldn't get all his bets in at that particular office. We were going to go to another office on Queens Boulevard and divide the bets. I think the windows close at 6:30 for Superfecta. I think some amount was left in security.

We went to the office at Queens Boulevard. He bought there. I didn't buy at that time. I just went with him.

We drove back to the first office and when we came in it was 6:30 or right after and they said, "We got all out but a few." It was just like $50 worth they had not got punched out.

Q Now, did that Superfecta or one of the Superfecta that you had and Mr. Pullman had bet on win that day?

A Yes, it did.

Q How many winning tickets were bet on that Superfecta; that one?

A Sixty-five.

Q Sixty-five?

A That was Bear's and I had seven.

Q So, that a total of 72 --

A A total of 72 tickets.

Q How much did the Superfecta pay that day?

A A little over $800. I believe $803.

Q With an $800 return was it necessary to fill out a 1099 return to cash those tickets?

A No, only if it is over $900.

Q Well, did you sign the 1099?

Did you cash these tickets by the way?

A I did. We went to the races that night; Forrest and Bear and myself, we went to the races and Forrest and Bear were going to drive to Maine that evening so we came home to the apartment; ate and Bear said, "I'll be going tomorrow with Forrest. Would you cash the ticket for me?"

I said, "Of course."

There was no problem; no signing. It was a matter of taking the tickets and getting the cash.

Q Well, 72 times $800, it should be over $50,000?

A It was over $50,000.

So, the next morning --

Q And you didn't have to fill out a 1099?

A Absolutely not. Not when a ticket is under $900.

Q Because of the three-dollar bet?

A I think it was at that time a three-dollar bet. It was, because it had to be $900; that's right.

Q Did you cash those tickets the next day?

A Yes, I did.

Q Tell us what happened the next day.

A I took the tickets and went over to the office where Ray Hilliard works and gave them to him. He said, "I don't have this kind of cash."

I said, "That's all right. I will leave them here."

In the meantime, he can call the other branches and try to get their deposits. They make them around two or three o'clock.

I told him I would return in the early evening, around five o'clock, in case I was going to bet, to pick up the money.

Q Did you pick it up?

A Yes.

Q How did you pick it up?

A I picked it up.

Q Was it all cash?

A No; three checks in the amount of $10,000 apiece and the rest was cash; $27,000 or something like that.

Q When did you see Mr. Pullman again?

A That evening at the racetrack, about nine o'clock. Him and Forrest came in from Maine.

Q And what did you give Mr. Pullman at that time?

A The checks and the cash.

Q Did you ever cash those three checks?

A No, I gave them --

Q You never signed for them?

A I gave them to Mr. Pullman.

Q So you turned over to Mr. Pullman $30,000 in checks and the balance in cash?

A That's right.

Q And you won -- how many of those tickets were yours?

A Seven.

Q So you won at that point about $5,000?

A Eight times seven -- yeah, right.

Q Now, other than the three times that you just told us about cashing the tickets, have you ever cashed anybody else's tickets?

A No.

Q Have you ever won any other Superfectas?

A No.

Q Have you ever lost on Superfectas?

A Many times.

Q And in May of 1974 did you have a lot of money?

A May of 1974?

Q 1973 -- I'm sorry.

A No, we did not. When I won, I usually lost it back, anyway.

I won money on other races other than Superfecta. I didn't just bet Superfecta but I generally lost it back.

Q Would you say you are ahead or behind as a result of the betting?

A Myself?

Q Yes.

A Behind.

Q Were you served with a dispossess for non-payment of rent in June 1973?

A Yes, I was.

MR. MEYERSON: I don't see the relevance.

MR. BOBICK: I certainly think it would be that if a person gets attempted to be dispossessed for not paying May or June rent it is relevant whether or not they had $57,000 on April whatever it is.

THE COURT: I will allow it.

Q Was that dispossess for the rent of May and June, 1973?

A Yes, it was.

MR. BOBICK: May I have this marked for Identification?

THE COURT: All right.

THE CLERK: One-page document marked Defendant's Exhibit E for Identification.

(So marked.)

MR. BOBICK: May I have this little document marked F for Identification?

THE COURT: Yes.

THE CLERK: So marked, Defendant's Exhibit F for Identification.

(So marked.)

Q At this time, Mrs. Rodgers, I show you Defendant's Exhibits E and F for Identification and I ask you if you have seen them before?

A My dispossess notice for the months of May and June on my apartment and this is the payment for the May and June rent on June 21, 1973.

Q Where was that payment made to?

A The Courthouse; the Civil Court in the County of Queens.

Q So that, would you say, as a bettor, you are not very lucky?

A Not too lucky, no.

Q Now, did Joseph Pullman, The Bear, ever give you anything for collecting this money for him?

A No.

MR. BOBICK: At this time I offer these two items in Evidence.

(Document handed to counsel.)

THE COURT: Any objection?

MR. MEYERSON: No objection.

THE COURT: Let it be marked.

THE CLERK: Defendant's Exhibits E and F marked in Evidence.

(So marked.)

Q Did Joseph Pullman ever give you any money for cashing these tickets for him?

A No, he did not.

Q Did he ever do anything for you on or about April the 10th, 1973?

A Yes. I had trouble with my car and I'm afraid to put it in garages in New York because you don't know if you're going to get a good job, bad job or what.

Joe offered to take it down to New Jersey. A friend of

his had a garage down there and have my car fixed.

MR. BOBICK: At this time I'd like two documents marked Defendant's Exhibit G.

THE CLERK: Documents marked Defendant's Exhibit G for Identification.

(So marked.)

Q Mrs. Rodgers, I show you Defendant's Exhibit G for Identification and ask you if you have ever seen those before.

A Yes. It is the bill he presented to me when he brought my car back.

Q Was it for the work done on your call?

A Yes.

Q By the way, what kind of car?

A 1969 Cougar.

Q Did you ever pay that bill?

A No. I offered to pay Joe for it but he wouldn't accept the money for it.

Q Is that the bill that was given to you by Joe Pullman?

A Yes.

Q For the work on the car?

A Yes.

Q Is it stated what date?

A April the 10th, 1973.

MR. BOBICK: At this time, your Honor, I offer the bill in evidence.

THE COURT: Any objection?

MR. MEYERSON: No objection.

THE COURT: Let it be marked.

MR. MEYERSON: May I just see it?

(Document handed to counsel.)

MR. MEYERSON: No objection.

THE CLERK: Defendant's Exhibit G marked in Evidence.

(So marked.)

MR. BOBICK: Your Honor, I'd like to show, at this time, E, F, and G to the jury.

THE COURT: I don't see the importance of showing them it now.

MR. BOBICK: When I finish?

THE COURT: Yes; next time there is a sidebar.

Q Now, you said that you knew Joseph Pullman for about five or six years?

A Yes.

Q Did Joseph Pullman ever tell you what he was doing or what he did for a living?

A He told me he occasionally drove a truck.

THE COURT: What?

THE WITNESS: Occasionally drove a truck or was a truck driver when he was working.

Q Did he ever tell you that he did any Government work?

A He had mentioned to me that he was helping a federal agency investigate the Superfecta races at Monticello in the late part of 1972.

Q When did he tell you that?

A Around February 1973.

Q Did he ever tell you what he was doing for the United States Government?

A What he was doing? No. He just mentioned to me that he was helping them investigate. Whether he was informing or what, I don't know.

Q Mrs. Rodgers, you are charged with a very serious crime.

A I realize that.

Q You are the defendant in this case.

Have you told us the truth?

A Yes, I have.

Q Did you at any time attempt to mislead either the United States Government, the Internal Revenue Service or anyone else by the use of a false name?

A No, I did not.

Q At any time did you notify -- on each occasion did you notify the people in OTB that you were cashing the ticket for somebody else?

A Annette Lehman; I notified Phil. He knew me as Connie Rodgers.

As Mary Grannum, I notified Phil Rosen.

I imagine if he had me sign, "Connie Rodgers" I guess it would have meant his job, I imagine --

MR. MEYERSON: Objection.

THE COURT: "Imagine," we don't allow.

Strike it out.

Q Did you tell Sam you were not Mary Grannum?

A That is correct. I told him I was Connie Rodgers. I told him who sent me there and why I was there.

Q Anything else you want to tell us at this time?

A I can't think of anything at this time.

MR. BOBICK: You may inquire.

At this time, before we go on, one further question:

Q I show you this piece of paper --

MR. BOBICK: May I have it marked for Identification.

THE CLERK: Document marked Defendant's Exhibit

H for Identification.

(So marked.)

Q I show you this piece of paper and I ask you if you can identify it.

A Yes. It is a copy of my marriage certificate to Donald Lehman in 1958.

Q And where is that from?

A The office or -- let's see -- the Clerk of the Court, Orphan's Court of Lancaster County, Pennsylvania.

MR. BOBICK: I offer this in Evidence.

THE COURT: Any objection?

MR. MEYERSON: No objection.

THE COURT: Let it be marked.

THE CLERK: Defendant's Exhibit H marked in Evidence.

(So marked.)

THE COURT: We will take a short recess before the cross-examination.

Suppose you pass the documents around to the jury. The Clerk will stay here and you can go back into the jury room one by one if you want to.

Do not talk about the case while you are in the jury room.

(Recess taken.)

(Jury not present.)

MR. MEYERSON: Your Honor, I am ready to cross-examine but it seemed to me that the defendant has admitted her guilt on two charges.

THE COURT: I cannot charge the jury that. They may have sympathy with her.

She has certainly confessed violations of the law.

MR. MEYERSON: Nothing was said as to entrapment.

MR. BOBICK: I think the jury has to find it intentional.

THE COURT: Knowing and willful.

All right. Mr. Bobick has a problem either way.

(Jury seated at 11:40 A.M.)

C O N S T A N C E R O D G E R S resumed the witness stand and testified further as follows:

CROSS-EXAMINATION

BY MR. MEYERSON:

Q Miss Rodgers, what identification did you have in the name of Annette Lehman?

MR. BOBICK: I didn't hear that.

Q What identification did you have in the name

of Annette Lehman?

A The identification presented here.

Q Any other identification?

A In the name of Annette Lehman?

Q Yes.

A No, I did not.

Q Now, could you tell me the purpose of these identifications?

A What identifications?

Q Both of them. Why did you have them?

A When I came to New York I tried to re-establish credit in the name of Annette Lehman. That is why I had that identification.

Q So, did you apply for different credit cards or go to banks for loans?

A No; just department stores.

Q And you went to the department stores in the name of Annette Lehman?

A Yes.

Q In the department stores, when you fill out applications -- do you remember filling out applications for credit cards?

A Yes.

Q And they ask statements in there and some of

the statements are --

THE COURT: Ask a question. Don't tell her what they were.

MR. MEYERSON: I'm sorry.

Q (Cont'g) Did you ever make statements in any applications that you didn't have any other name?

A Not that I know of.

Q Did you ever make statements that you were never convicted of any crimes?

A Did I make this statement; where?

Q In any application that you filled out for credit cards.

A I have no idea.

Q The purpose of the identification was to fool people, to fool businesses; correct?

MR. BOBICK: Objection.

THE COURT: Overruled.

A It is not to fool anybody. Annette is my name and Lehman is also my name.

Q Your name would be Constance Annette Spate Lehman Rodgers; is that correct?

A Correct; all of them belong to me.

Q Was it the purpose to fool the department stores into not knowing that you had lost credit or knowing

who you were under your other name?

A No, it wasn't to fool them. It was to try to re-establish credit.

Q Which you couldn't do under your correct name?

A No.

Q So, you were trying to fool them?

A No, I was not trying to fool them.

Q Let's get down to the dates that you cashed tickets.

Could you tell me the specific dates now that you say you cashed tickets?

A I don't remember -- the one at Yonkers -- it was in late January.

Q When was the next one after that?

A March 21st, the day in question.

Q And when after that?

A April 2nd.

Q After that?

A April 4th.

Q After that?

A April 5.

Q After that?

A None that I know of.

Q Now, back to this identification. How long

have you had this identification?

A 1970.

Q Where did you usually keep it; on your person?

A No.

Q In your home?

A In my home.

Q And any particular place in your home?

A In a drawer in my bedroom.

Q Did you once discover the Constance Rodgers identification missing?

A Yes. It was returned to me. The only identification in that folder was Constance Rodgers with my Pennsylvania address. It was sent to Pennsylvania; no money, just cards.

Q Was Constance Rodgers returned to you?

A Yes.

Q Did you ever lose this identification (indicating)?

A Did I ever lose it?

Q Well, you lost the Constance Rodgers'.

Now, I am asking, did you ever lose this or was this in your possession?

A Not to my knowledge. It was in the drawer.

Q And you brought it in here today --yesterday

and had your lawyer put it in as an exhibit?

A Yes.

Q And you're very sure as to the date; only March 21, April 2, April 4 and April 5, and sometime with Yonkers?

A As far as my memory serves me, yes.

Q Did you ever use any other identification?

A Yes, I used the Mary Grannum identification .

Q Any others?

A No, I did not.

Q You never did?

A No, I did not.

Q And any other ticket you ever cashed you also cashed under the name of Constance Rodgers; correct?

A Yes.

(Document shown to witness.)

THE COURT: Mark it first.

THE CLERK: One-page document marked Government's Exhibit 12 for identification.

(So marked.)

MR. BOBICK: May I see it, please?

(Document handed to counsel.)

(Pause.)

Q Could you explain to me how your name

and the same address and the same social security card was on the March 21st, 1099, is again on a second 1099 two days later?

A I can't explain it and it is not my signature.

Q But you said that the identification was never out of your drawer?

A How do I know if it is out of mydrawer?

MR. BOBICK: Objection.

THE COURT: Wait a minute.

I don't understand the last question you asked.

You just showed her a document. Find out what it is and ask a question about it.

Q Tell us what it is -- are you familiar with those forms?

A Yes. It is a 1099 form. It is in the amount of $28,000.

Q What is the name on it?

A Annette Lehman.

Q The address?

A 9513 Horace Harding Expressway.

Q The Social Security number?

A There is no Social Security number here.

Q The number on top. What is the number on top?

A 534-24 836.

Q Your address isn't 9513?

A It is 9711 Horace Harding Expressway.

Q That is not your Social Security number?

A It certainly is.

Q It is?

A Oh, no, it is a combination to a safe.

Q And you have no explanation for how there would be another 1099 with the same indentification and the same Social Security?

A I just told you that is not my signature on that card.

Q And you have no explanation for it?

A I have no explanation for it. It is not my signature.

Q And you just told us that you never discovered where this identification was lost. You never knew it was lost?

A It wasn't in the drawer.

Q And you came in with it today; correct?

A I came in with it yesterday, I believe.

Q And on this identification what is the address on there?

A 9713 Horace Harding Expressway.

Q Did you fill it out yourself?

A I most certainly did. It is my handwriting and my printing.

THE COURT: May I see it?

(Document handed to Court.)

(Pause.)

THE COURT: All right.

Q And your address is now 9713?

A It is 9711.

Q You filled this out yourself?

A I did but it was filled out when I moved to New York. It was a long address. I made a mistake.

Q Just answer the questions put to you.

THE COURT: Yes, just answer questions and don't volunteer beyond, please.

THE WITNESS: Okay.

Q On March 21st, did you have any explanation how 9513 Horace Harding Expressway got on that?

A I never noticed it before. It was shown to me the other day.

Q You signed that one, didn't you?

A Do I have to read it before I signed it?

Q You didn't read it? Is that what you are

saying?

A No, I didn't.

Q Read the statement at the bottom for us now.

A "I certify that I am the true owner of the ticket presented and have submitted my true personal identification in support of the above disbursement to me.

"I understand this information is for the Internal Revenue Service and any misrepresentations or false statements made herein is a violation of Section 7206(2) Title 26 United States Code, carrying the maximum penalty of $5,000 fine or three years imprisonment or both."

Q You never read that before?

A No.

Q You never checked the address and Social Security numbers written on it?

A I didn't think I had to check. I didn't fill it out.

Q When you signed even under Mary Grannum you never read it? It never occurred to you that something might be wrong with that?

A No, I didn't read it.

Q Of course not.

A I mean, that is their job, not mine.

Q For the tickets cashed on April 5, tell us

again where you got those tickets?

A From Mr. Joseph Pullman.

Q All of them?

A Except seven were mine.

Q Did you purchase those tickets yourself?

A Yes, I did.

Q Was Mr. Pullman with you at the time?

A Yes, he was.

Q And where did Mr. Pullman purchase -- did he purchase his tickets also at the same time?

A At the same time plus at another branch.

Q And seven tickets were yours; correct?

A Seven tickets were mine.

Q Would it surprise you to learn that fifteen of those tickets were purchased onone line and 57 tickets were purchased at another line?

A No. It doesn't surprise me because we had our bets together on paper.

I made my bets, he made his. We reduced the one sheet. The sheet was torn into sections and given to each teller, so it doesn't surprise me.

Q Fifteen came from one window. You said seven were yours?

A Mr. Pullman and I bet together.

I made my selections at home. He made his selections at home. We reduced it to one piece of paper.

We get there, they tear the sheet of paper in sections, in blocks and each teller is given a certain section. So, it doesn't mean a thing that my bet in one section was made over there and his bet was over here because I might have purchased two or three-dollar tickets and his winning ticket could have been in $18 key boxes or 72 -- I don't know.

Q When you cashed the tickets could you tell us the circumstances of that day again, on April 5?

A The evening before Mr. Pullman and Mr. Gary went to Maine he asked me to do him a favor of cashing his tickets.

There was no problem, nothing to be signed and I did not sign for anything.

Q Did you submit any identification?

A I did not.

Q You are sure of that?

A I'm positive of that.

Q Did you ever use the name Constance Baker?

A No, I did not.

Q Never?

A Never.

MR. BOBICK: May we know what date Mr. Meyerson is talking about?

MR. MEYERSON: Ever.

I will be more specific.

Q Did you ever use the identification of Constance Baker on April 5 when you cashed those tickets?

A No, I did not. I didn't need identification that day.

The Superfecta paid $800. There was no 1099 form to be filled out. Why would I need identification?

MR. MEYERSON: We will soon find out.

MR. BOBICK: I ask that Mr. Meyerson's comment be stricken.

THE COURT: Yes. Strike it out.

Q Could you tell us about your employment again? You are a waitress?

A At this time I am unemployed. I cannot work and be in court at the same time.

Q How long have you been unemployed?

A In December I hurt my shoulder. I took a leave-of-absence at that time.

Q Are you getting some sort of benefits because you hurt your shoulder?

A No. I receive $40 a month child support from

my ex-husband, if that is a benefit and that goes directly to Pennsylvania to my mother for my child.

Q You were employed as a waitress and you hurt your shoulder in December?

A Yes.

Q How much did you make, approximately? How long were you employed as a waitress? I am sorry.

A Some time in the summer. I took the job in the summer of 1973.

Q In other words, the summer of 1973 to approximately December of '73?

A Yes.

Q Is that correct?

A Yes.

Q So, it is for three months --

MR. BOBICK: Objection to the comment "three months."

THE COURT: Is the comment wrong?

MR. BOBICK: Yes.

MR. MEYERSON: It could be four months or five months.

Q How much did you make as a waitress?

A I really have not sat down and thought about it at this point.

Q Approximately?

A Approximately -- I would say I averaged about a hundred and a half a week for the time that I was there.

Q A hundred and a half a week?

A That's right.

Q Could you tell us how much your apartment costs?

A I think $256 a month with the garage.

Q Now, you said there was a matter in Pennsylvania, an obscenity and a drug conviction.

Did you testify at those trials?

A Yes, I did.

MR. BOBICK: Objection to the plural. Was there a plural trial?

THE WITNESS: Yes, it was trials and there was only one trial.

Q You did testify?

A Yes, I did.

Q And you appealed to a higher court; is that correct?

A It is presently in the State Supreme Court.

(Continued on next page.)

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Q That is the highest court?

A State Supreme Court.

Q Did you appeal to a second court first?

A Yes. It was four neutral, four unneutral plus a dissenting opinion.

Q Now, your appeal to the highest court was on points of law?

A It was on all points. It was unanimously voted that the whole case be reviewed on all points applied for. I don't know what my lawyer has done.

Q And you are absolutely sure that you never used any identification with the name of Constance Baker?

A I don't know what you are implying but no, I did not.

MR. MEYERSON: Two minutes, your Honor.

THE COURT: Yes.

(Pause.)

MR. BOBICK: I hope no witness is sitting in the courtroom who is expecting to be called.

THE COURT: I note your hope.

MR. BOBICK: I thought the instruction was all witnesses would be excluded.

THE COURT: Go ahead, Mr. Meyerson.

MR. MEYERSON: I have no further questions.

Excuse me.

(Pause.)

BY MR. MEYERSON:

Q The tickets that you received and that you cashed as Mary Grannum, you got them all from Joseph Pullman; is that correct?

A Yes, I did.

Q You didn't purchase any yourself; is that correct?

A No, I did not.

Q Did he tell you where he got them from?

A No. He said they were Mary Grannum's. Where he got them I don't know.

MR. MEYERSON: Nothing further.

THE COURT: Do you have any redirect?

MR. BOBICK: Yes, your Honor.

You didn't offer Exhibit 12 in evidence. Are you offering it?

MR. MEYERSON: Yes.

MR. BOBICK: No objection.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 12 in evidence.

(So marked.)

THE COURT: Let me look at it.

THE CLERK: Yes, sir.

(Document handed to Court.)

(Pause.)

REDIRECT EXAMINATION

BY MR. BOBICK:

Q Now, Mrs. Rodgers, you said this Government's Exhibit 12 was not your signature?

A May I see it, please?

(Document handed to witness.)

(Pause.)

A (Cont'g) No, it is not.

Q I show you Government's Exhibit 1 which is the transaction of March 21, 1973. Is that your signature?

A Yes, it is.

Q Is there any question about that?

A There is no question that this is my signature.

Q Referring to Government's Exhibit 1 --

A Right --

Q -- and Government's Exhibit 12 --

A This is absolutely not my signature --

Q -- did you cash any winning Superfectas with this on whatever date --

THE COURT: March 23rd. I had a hard time finding the date.

A I did not cash any on that date. On that date that is the only one I cashed under that name.

Q Did you tell Mr. Pullman in March that you had cashed the transaction on March 21st with the I.D.?

A I believe so.

Q Did you show Mr. Pullman the I.D. you used?

A I believe so.

Q Did Mr. Pullman visit you at your home on many occasions?

A Many occasions.

Q Do you know if he took your identification on March 23rd?

A I don't know if he did. It is possible because we use our bedroom more than any other room in the apartment. We have the TV and telephone in there. We eat back there and that is where Mr. Pullman spends his time as well as Gary and myself.

Q You don't know who used the identification on March 23rd?

A No.

Q But there is no question that it is not your signature?

A Absolutely none.

Q And you are telling us you did not do it?

A I didn't do it.

Q On the tickets that you bought with Mr. Pullman resulting in the cashing of the ticket on April 5th, did you alone buy 72 tickets?

A Oh, no.

Q How many tickets?

A I don't know exactly what the total was. I think he told me he spent about $20,000 that night.

Q Mr. Pullman invested, on the purchase of tickets in order to get the 72 winners, how many tickets do you say that he purchased?

A How many tickets? I have no idea. It was too long ago.

Q But he did tell you that he had spent about $20,000?

A Yes. In fact he had to cash a ticket to pay part of what he bought.

Q When Mr. Pullman bought tickets, these tickets of which the 72 tickets were the winning tickets, he cashed tickets in?

A A or more tickets.

Q Do you know if Mr. Pullman filled out a 1099

at that time?

A I imagine he did but I can't be sure of anything.

There are two doors that lead to the back office and he and Joan -- I don't know her last name -- acting manager, went in between those two doors and conducted their business there.

Q So, these tickets you and Mr. Pullman bought, there were many, many other tickets other than the 72 winning tickets?

A Oh, yes.

Q It wasn't that you walked in, bought 72 tickets and won on all 72?

A Hardly.

MR. BOBICK: Thank you.

RECROSS-EXAMINATION

BY MR. MEYERSON:

Q Did you ever give identification of Annette Lehman to Forest Gary to have him cash tickets without identification?

A I never gave that I.D. to anyone.

MR. MEYERSON: Nothing further.

MR. BOBICK: Nothing further, your Honor.

At this time the defense calls Joseph Pullman.

THE COURT: Bring him in.

MR. MEYERSON: Your Honor, may we have a ruling that all witnesses will be excluded?

THE COURT: Are there any witnesses that you know of?

MR. MEYERSON: (Addressing spectator) Do you want to step out, please.

(Whereupon a spectator was excused from the courtroom.)

THE COURT: You have the ruling. I note there was one woman in the courtroom.

THE CLERK: Raise your right hand, please.

J O S E P H P U L L M A N, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Joseph Pullman.

THE COURT: I think I should inform you now, Mr. Pullman, that since you are under indictment still awaiting trial, you may, if you wish, plead the Fifth Amendment with respect to any questions answers to which might incriminate you, or you may ask for a lawyer if you want one.

THE WITNESS: Thank you.

THE COURT: You may proceed, Mr. Bobick.

DIRECT EXAMINATION

BY MR. BOBICK:

Q Mr. Pullman, are you also known as The Bear?

A Yes.

Q Mr. Pullman -- by the way, Mr. Pullman, other than this courtroom, have we ever spoken together?

A I don't believe so.

Q Did we ever meet?

A No.

Q Did you ever talk to anybody who said they were from my office?

A No.

Q On April 2, 1973, did you come to 4711 Horace Harding Expressway, the apartment of Constance Rodgers, and give her winning Superfecta tickets and identification of one Mary Grannum?

MR. MEYERSON: Your Honor, it is a very leading question.

THE COURT: I will permit it anyway.

A Did I -- pardon me.

THE COURT: Miss Ginsburg, please read the question again.

(Record read.)

A I refuse to answer on the grounds it may tend to incriminate me.

THE COURT: Objection sustained.

Q On April 4th, did you come to the apartment of Constance Rodgers and give her winning Superfecta tickets and identification belonging to Mary D. Grannum?

A April 4? I refuse to answer on the grounds it may tend to incriminate me.

Q On April 5th, did you give Mrs. Constance Rodgers Superfecta winning tickets and ask her to cash them for you?

A I refuse to answer on the grounds it may tend to incriminate me.

Q On April 4th, did you go into an OTB establishment with Mrs. Constance Rodgers and buy Superfecta tickets which resulted in your spending in excess of $20,000 for tickets?

A I refuse to answer on the grounds it may tend to incriminate me.

Q April 4, 1973 did you --

MR. BOBICK: Withdrawn.

Q Did you at this OTB office trade in winning tickets in order to pay for this purchase of tickets of that day; that night?

A I refuse to answer on the grounds it may tend to incriminate me.

Q Mr. Pullman, on March 23, 1973 did you have winning Superfecta tickets and did you use the identification of Annette Lehman --

A Excuse me. I am no girl --

Q Did you ever take the identification of Annette Lehman and use it to have tickets cashed?

A Did I ever use --

Q Did you ever have anybody use that identification?

A No.

Q Did you ever visit the home of Constance Rodgers on or after March 21, 1973?

A On or after March 21, 1973, yes.

Q On many occasions?

A Yes.

Q Constance Rodgers ever give you money from the winnings of Superfecta tickets?

A On or about, you referred to?

Q Yes.

A I refuse to answer on the grounds it may tend to incriminate me.

Q Did Constance Rodgers give to you checks and

cash representing the winning Superfecta tickets after March 21, 1973?

A I refuse to answer on the grounds it may tend to incriminate me.

MR. BOBICK: No further questions of this witness.

THE COURT: Mr. Meyerson, any questions?

MR. MEYERSON: I have no questions.

THE COURT: You may step down.

Thank you, Mr. Pullman.

MR. BOBICK: Just one more minute. I'm sorry.

(Pause.)

MR. BOBICK: Nothing further.

THE COURT: Thank you. You are excused.

Anything more, Mr. Bobick?

MR. BOBICK: Your Honor, may I impose upon the Court to take an early luncheon. May we leave for an early lunch, come back and I can make a decision. I have to determine whether or not there are further witnesses.

This is not a request for more time.

THE COURT: Any objection, Mr. Meyerson?

MR. MEYERSON: I'd like to go ahead, your

92 Honor, but --

THE COURT: As long as we don't lose any time we will take lunch now and resume at a quarter past one.

Meanwhile, do not talk about the case among yourselves or anyone else or talk at all to people in the courtroom.

(Jury excused at 12:20 P.M.)

THE COURT: Mr. Bobick --

MR. BOBICK: Yes, your Honor.

THE COURT: I don't have supplemental requests but I suppose I should charge that the question of knowing and willful relates to the signing of a false statement and not a question of whether you are doing a favor for somebody else.

MR. MEYERSON: That is the law, your Honor.

MR. BOBICK: There is nothing I can say to it.

THE COURT: Did you have comments or anything else?

MR. BOBICK: I certainly would not like it done but there is nothing I can say to it.

THE COURT: Very well.

(Luncheon recess taken.)

* * *

93 AFTERNOON SESSION

(Jury not present.)

THE COURT: All right. Are we all ready?

MR. MEYERSON: Your Honor, my rebuttal, the witnesses do identify the defendant and I don't feel any hearing is necessary since any witnesses whom I might bring up, she admitted knowing on the stand.

THE COURT: All right.

Bring in the jury.

(Jury entered the jury box at 1:25 P.M.)

THE COURT: Mr. Bobick, anything more?

MR. BOBICK: Your Honor, at this time the defense rest.

THE COURT: Mr. Meyerson, any rebuttal?

MR. MEYERSON: Yes, your Honor, we have rebuttal witnesses.

The Government calls Miss Joan Siegel.

THE CLERK: Raise your right hand, please.

J O A N S I E G E L, having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

MR. BOBICK: May we have all witnesses excluded?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Miss Siegel, can we ask your employment?

A Branch manager, Offtrack Betting.

Q Was that your employment on April 5 of 1973?

A I was shift manager, assistant manager.

Q What branch was that?

A Branch 64, Elmhurst.

Q Now, do you know the defendant?

A Yes.

Q Did she ever cash $56,000 worth of tickets at your branch?

A Yes, she did.

Q Can you tell us the name which she used?

A Constance Baker.

Q Did she submit identification?

A Yes, she did.

Q And can you tell us if you remember the exact address that was on the identification?

A Not the exact -- it was in Queens, in the Maspeth area, I believe.

Q And was it on the Horace Harding Expressway in Rego Park?

A No.

Q Or in Forest Hills?

A No.

Q Now, could you relate that day, when the defendant was there, to your best recollection, as to when she came in and why any identification was required, until the time she left?

A She came in around three o'clock, three-thirty, and it was 72, 73 tickets.

No tax form was required because they were less than $900.

We had started processing them through the terminal to pay her and we were made aware of a memorandum that came down two days earlier that if anybody had three or more Superfecta payouts we had to notify the Security Department.

The memorandum was vague whether it had to be tax or non-tax payment, $900 or less, so we had to call and get it clarified.

I called the Security Department and they said not to pay her out the money unless she showed identification; to stamp the tickets marked "Paid"; not to give them back to her unless she showed identification. I told her that and she said she'd be back later and came back approximately at 6:30, right before the Superfecta closed,

with identification. And I paid her out.

Q With the identification of Constance Baker?

A Yes.

Q Do you remember, to the best of your recollection, what that identification was?

A One of them was like a certificate of birth and the other one, I believe, was a baptismal and a third one, which I don't remember.

Q Did you keep those or give them back to her?

A I gave them back to her.

Q And that amount again was about $56,000?

A Yes.

Q Is that a large amount of cash to you?

A Yes.

Q How much is the average amount you would usually cash?

A There is no way of saying. It could be from $2.80 to $56,000, which was my largest.

Q What would you say was the next largest?

A That I ever paid out? Around $30,000.

Q How many times did you pay out $30,000?

A Maybe once.

Q And below that?

A I'd say once that I have paid out more than

once, I'd say, $10,000. I have paid that out a couple of times.

Q And most of the others are in the hundreds or so?

A When there were Superfecta payouts, which stopped in mid-April, before that, it would be maybe one every other day -- you have Superfecta payouts of four, five, ten thousand dollars, whatever it was, but since that time there is really none.

Q Had the defendant been in your branch before that date?

A Yes.

Q And after that date?

A No.

Q And before that date, approximately how many times would you say you saw her in that branch?

A Around five times; five, six times.

Q When she came back with the identification approximately how long would you say you viewed her and had a chance to be with her?

A You mean on the day of the cashing?

Q Yes.

A Around ten minutes.

MR. MEYERSON: I have no further questions.

Thank you.

MR. BOBICK: Your Honor, may we have Rosario material?

THE COURT: Come to the sidebar.

(Sidebar discussion.)

MR. BOBICK: I'm sorry. I'd like to amend that to Jencks material.

(Document handed to counsel.)

THE COURT: I think at this time it would have been helpful to give it to him before.

(Conclusion of sidebar discussion.)

(Following held in open court.)

CROSS-EXAMINATION

BY MR. BOBICK:

Q Miss Siegel, is your recollection that Mrs. Rodgers came into the place and gave you the 72 or 73 tickets?

A Yes.

Q What time did she give you these tickets?

A Around three, three-thirty.

Q Three-thirty in the afternoon.

Would it refresh your recollection -- by the way, what time did you work in that place?

A From two to six-thirty.

Q Was there a manager there?

A Beside myself?

Q Yes.

A Yes.

Q What is his name?

A Ray Hilliard.

Q Was Ray Hilliard working in the morning of that day?

A Yes.

Q Now, this was a Superfecta payout with a payout of $800 per ticket; right?

A Approximately.

Q There was no 1099 required?

A No.

Q Do you have anything with the signature of Mrs. Rodgers on it by any name?

A No.

Q Did you ask her to sign something to indicate that you are giving her this kind of money?

A Did I ask her to what?

Q Sign something.

A No.

Q Never asked her to sign anything? You just looked at it and then gave it back?

A The identification?

Q Yes.

A Yes.

Q You didn't make any notes on it anywhere?

A No.

Q You didn't write anything down?

A Yeah, I wrote down the information.

Q Where did you write it down?

A On a piece of scrap paper.

Q Where is that piece of scrap paper?

A I threw it in the garbage.

Q When?

A The same day.

Q So, you took identification, wrote down what you say was Constance Baker, with a Maspeth address, kept it and threw it in the garbage?

A I had to call it into the Security Department and my area manager, my boss and say, "This is what she gave me" to state "Yes, she came back with the identification." This is what it was.

Q Have you ever spoken to Mrs. Rodgers on the telephone?

A On a couple of occasions.

Q By the way, do you know whether or not there

is a tape recording of those conversations?

A No, I do not.

Q Can you tell us when you spoke to her on the telephone the first time?

A Not the exact date but she called the branch and said that she was coming, so this way we had extra personnel available to service her.

Q When she called you on the telephone, she said, what?

A Well, I didn't take the first call that came in, so I was told of how she would call and what she would say.

Q Who told you that?

A The branch manager.

Q Who?

A Ray Hilliard.

Q And this was not on April 5, was it?

A April 5th, the day of the cashing?

Q Yes.

A No, it was not April 5th.

Q It was before April 5th?

A Yes.

Q Now, while you were in this -- by the way, have we spoken? Once I saw you by the elevator with Mr.

Meyerson. Other than that, have we ever spoken?

A No.

Q Nobody from my office has spoken to you? This is the first time you are talking to me?

A Yes.

Q While you were hanging -- sorry-- while you were waiting, did you happen to see a person you had seen before in the OTB office?

A Say that again?

Q While you were waiting in this courtroom or witness room or hallway, wherever you were waiting, did you happen to see somebody you had seen before?

A Yes, I did.

Q I am not talking about an employee of OTB.

A Yes.

Q A rather heavy gentleman?

A Yes, I did.

Q Known as -- what is his name?

A When I was shown the pictures by the FBI, I wasn't able to identify the gentleman by the picture because the picture didn't look like him. It wasn't until I came here on Monday that I was made aware of his name as Mr. Pullman.

Q Joseph Pullman?

A Yes.

Q Was Joseph Pullman in OTB with Miss Rogers?

A Yes, he was.

Q Did he buy tickets?

A Yes, they bought together.

Q They bought to gether.

And did Mrs. Rogers ever cash any tickets other than what you say happened on April 5th?

A No.

Q Did Mr. Pullman ever cash any tickets?

A Until a couple of hours ago I wasn't aware that he did.

This is going back almost a year and I completely forgot about him cashing a ticket. During the luncheon recess it was brought to my attention.

Q Who brought it to your attention?

A Somebody from the corporation had told me that they had the record of a 1099 I filled out for him. I forgot all about it.

Q You never remembered Mr. Pullman signing any of those 1099s?

A No.

Q By the way, what was the date of the 1099 you filled out for Mr. Pullman?

A I have no idea.

Q Isn't it a fact that it was April 4, the day the tickets were sold?

A I can't remember.

Q On April 4th, didn't Mr. Pullman and Mrs. Rodgers buy a great deal of tickets?

A They bought tickets that whole week.

Q On April 4th, did they buy a great deal of tickets?

A Yes.

Q By the way, was Mr. Pullman a big customer of that OTB office?

A I have only worked in that OTB office for the two weeks prior to April 5th.

Q During those two weeks was Mr. Pullman a good customer?

A Yes.

MR. MEYERSON: I object on the ground of relevance. Mr. Pullman was there. So what?

I don't understand the line of questioning having to do with false identification.

THE COURT: Overruled.

Q Now, did Mr. Pullman on April 5 -- rather, April 4, buy a great deal of tickets?

A The both of them bought a great deal of tickets.

Q Isn't it a fact that at that time Mr. Pullman paid for some of those tickets by turning or signing in win tickets on Superfectas?

A I have no recollection of that.

Q Did you fill out a 1099?

A Until two hours ago I had no recollection.

Q Did you see it?

A No.

Q You were told that it existed?

A I stated to an employee that I never filled out a 1099. There was no record. I stated this and they said "You did fill out a 1099 for Joseph Pullman." I said "No." And then it was brought to my attention that I did.

Q How much was the 1099 form?

A It was just told to me. It was $4,000.

Q Do you know whether or not that Superfecta was used to purchase the tickets sold on April 4th?

A I have no idea.

Q Do you know Forest Gary?

A I have met him on a couple of occasions.

Q Did you ever speak to him on the telephone?

A No.

Q You never spoke to him at all?

A No.

Q Do you have a Social Security card?

A Yes.

Q Do you have it with you?

A Yes.

Q May we see it, please?

A This one (indicating)?

Q The middle one.

A Umm-hmm.

Q Don't put it away.

Did you receive that middle Social Security card from Forest Gary?

A Yes.

Q Is it allowed for OTB people to take gifts from bettors?

A This happened before I even met Miss Rodgers or anything.

A customer came in to Rego Park branch. I was there working prior to that, I believe, and he gave his identification. I think he was cashing like $35,000.

I called the manager on the telephone and I said "A payout is here requesting to see you."

I admired -- I said "I admire your thing."

I said "Where did you get that?" He said "I'll get one for you."

Q Did you pay him for it?

A I offered --

Q Did you?

A No.

Q Had you ever spoken to Forest Gary outside OTB headquarters?

A No.

Q You never met with Forest Gary anywhere?

A No.

Q Did you report to OTB that somebody had given you a free gift of a Social Security metal card?

A No.

Q Never did?

A No.

Q Did you ever receive any other presents from Forest Gary?

A No.

Q Did you know that Constance Rodgers and Forest Gary worked together?

A No.

Q Never did?

A Not until this week.

Q Not until this week.

You were never shown a metal identification card, Social Security card similar to that with the name "Constance Rodgers" on it?

A No.

Q Never?

A No.

Q And isn't it a fact that you said "I see that your boy friend is Forest Gary"? Did you say that to Constance Rodgers?

A No.

Q Are you telling us the truth?

A Yes, I am.

MR. MEYERSON: Your Honor, I object to "not telling us the truth" as being a little argumentative. The witness is sworn to tell the truth.

THE COURT: All right.

Q Is it your recollection that the first time you saw the 72 tickets on April 5, 1973 was at 2:30 in the afternoon?

A Yes, it is.

Q Is it your recollection that they were handed to you by Constance Rodgers?

A She was in the branch with them.

Q Is it your testimony that she handed you the tickets?

A To the best of my knowledge, yes.

Q Yes?

A Yes.

Q You are sure?

A You are asking me things that happened almost a year ago. It is impossible to remember every little fact.

Q And you have nothing to indicate the name, no signature, from Constance Rodgers or Baker or anything else; nothing with her writing on it?

A Nothing, no.

Q But you are saying that she used the name Constance Baker?

A Yes.

Q Did she use the name Constance Baker when she called you up on the telephone?

A No.

Q What did she say -- "I'm the redhead, I'm coming in"?

A She used the name "Connie."

Q "This is Connie. I am coming in. Clear a couple of windows for me"?

A She didn't say "Clear a couple of windows."

She said "I'll be in in around an hour."

Q When was the first time she told you her name was Connie?

A The manager told me.

Q Do you know if the manager ever had her telephone number?

A I have never seen him dial it but he could have had it.

Q When did he tell you that her name was Connie?

A The first time I came to the branch.

#9 Q What did he tell you about Connie?

A He just said that there was a woman coming in, betting heavy, betting Superfectas. Since I was going to work the service, the p.m. shift, I should try to service her.

Q Who was the manager besides Ray?

A That's all.

Q When was the first time you saw this woman named Connie?

A I can't remember the exact date. It is hard to remember it. Again, it is a year ago. I really can't remember exactly on the date.

Q But you do remember it was only four or five times in that two-week period you saw her?

A Yes.

Q Couldn't have been more than that?

A No.

Q She didn't come in every day?

A No.

Q Did she ever come in with Forest Gary?

A No.

Q You never saw her and Forest Gary together?

A No.

Q Up until the time that you say there was a pay-out on April 5th, you never paid her anything, did you?

A No.

Q Never got her to sign anything?

A No.

Q Never got any identification from her?

A No.

Q Actually, this woman came in four or five times, cleared your window -- you cleared how many windows for her?

A Three.

Q Three windows and she kept three cashiers busy buying tickets?

A Right.

Q And you never knew what her last name was?

A No.

Q Never asked her last name?

A No.

Q Never saw her cash a ticket?

A No.

Q Never saw her winning anything?

A No.

Q You saw all this money coming in and nothing going back out?

A Right.

Q And you never once asked her last name until April 5th?

A When you're a manager in OTB and you get a big customer you learn these horse players want their privacy. If you go over and pester them and ask them questions you lose the business.

Q Did you ever ask "You're betting a lot of money. What's going to win tomorrow or the next day"?

A Never.

Q You never bet on anything like that?

A No.

Q Do you know if it is legal for OTB people to bet?

A It is illegal for an OTB employee to place a bet.

Q And it is also illegal for the OTB people to receive money?

A Yes, it is.

Q Did you ever go out with Forest Gary?

A No.

Q Never?

A Never.

Q And it is your recollection that she used Baker?

A Yes.

Q Not Rogers but Baker?

A Yes.

Q She didn't have to sign anything, did she?

A No.

Q She had no reason for using her name?

A No.

Q There was nothing you required from her? You didn't ask her for a signature or a sample of writing?

THE COURT: What is the question?

Q Did you ask her for her signature?

A To the best of my recollection I do not think so.

Q A sample of her writing?

A No.

Q Did you take a photograph of her?

A No.

Q So, if anybody came up to you and said "I'm Mickie Mouse" you would have said "Okay" and written down Mickie Mouse?

A Right.

Q And you didn't keep the record?

A No.

Q Did anyone tell you to say that she said Constance Baker?

A They did not.

MR. BOBICK: I have no further questions.

THE COURT: All right --

MR. BOBICK: I am sorry, your Honor.

BY MR. BOBICK:

Q Did you ever have any conversations with the FBI?

A Yes.

Q Did the FBI ever have a friendly conversation with you?

A Yes, they were friendly.

Q What did they say in this friendly conversation?

A They gave me pictures to point out people.

Q Did they ever tell you you could get in trouble?

A No.

Q Never threatened you?

A No. They were very nice.

Q Did you ever tell Forest Gary they threatened you?

A No.

Q When is the last time you spoke to Forest Gary?

A I was working the Forest Hills parlor, I believe it was, right after the first time this made the papers and I was manager on duty and one of my agents called down and said they needed cash because someone was collecting and I went to see who it was. It was Forest Gary. I said "Hello."

Q When was the last time you saw Forest Gary?

A Late April, maybe May.

Q When was the last time you spoke to Forest Gary?

A That same time.

Q Would it have been yesterday? Did you speak to him yesterday in this very courtroom or very building?

A Yes, I did. I forgot about that.

MR. BOBICK: You forgot.

I have no further questions.

THE COURT: Mr. Meyerson?

REDIRECT EXAMINATION

BY MR. MEYERSON:

Q What did you say to Mr. Gary yesterday?

MR. BOBICK: Objection.

THE COURT: Overruled.

A While I was standing in the hallway here I ran into him and he said "Hello" and I said "Hello." I said "How are things going?" He said "Okay"; really nothing pertaining to the case; small talk, around a minute.

RECROSS EXAMINATION

BY MR. BOBICK:

Q Did you tell him yesterday that the FBI threatened you?

A No.

Q Never used that word at all?

A Never used that word at all.

MR. BOBICK: Nothing further.

THE COURT: You may step down.

MR. MEYERSON: The Government calls Ira Udell.

THE CLERK: Raise your right hand, please.

I R A U D E L L, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. MEYERSON:

Q Mr. Udell, do you know Forest Gary?

A Yes, I do.

Q And did you ever cash tickets for him when he presented to you the identification of Annette Lehman?

A Yes.

MR. BOBICK: Objection, your Honor.

THE COURT: Overruled.

MR. BOBICK: May we approach the bench?

THE COURT: All right.

(Sidebar discussion.)

MR. BOBICK: I'd like an offer of proof.

MR. MEYERSON: The answer was "yes." That is my offer of proof.

THE COURT: When, where, what circumstances?

MR. BOBICK: What are the circumstances?

MR. MEYERSON: I will go into the date and the time of his best recollection. He is an OTB clerk. I will bring that out.

THE COURT: Do you have the material on him?

MR. MEYERSON: Yes, I will give it to the attorney.

MR. BOBICK: I didn't get it and I want a ruling that it is not binding on the defendant unless she was present and there.

If it is an offer of proof as to anything she did I want to know it now.

THE COURT: It is not necessary --

MR. BOBICK: She is not charged with conspiracy.

THE COURT: It indicates illegitimate use of identification she contends she kept and used innocently.

MR. BOBICK: Still, it is an illegal act on his part, not hers.

THE COURT: It is not binding on her but it is relevant.

MR. BOBICK: Then I want the ruling that it is not binding.

(Conclusion of sidebar discussion.)

(Following held in open court.)

MR. BOBICK: I am sorry. May we have another sidebar.

THE COURT: All right.

(Sidebar discussion.)

MR. BOBICK: My client tells me that through the swinging doors she sees Joan talking to Ray Hilliard.

MR. MEYERSON: Now that you told me that I am not going to call him.

(Conclusion of sidebar discussion.)

(Following held in open court.)

THE COURT: Let me say with respect to the sidebar, I have ruled the testimony is relevant but of course not conclusive in the case. The credibility of all witnesses is for the jury.

MR. BOBICK: Also, it is not binding.

THE COURT: Nothing is binding. It is the question of credibility.

MR. MEYERSON: May I have the last question and answer read, please.

THE COURT: Miss Ginsberg?

(Record read as follows:)

"Q And, did you ever cash tickets for him when he presented you the identification of Annette Lehman?

"A Yes."

Q I show you Government's Exhibit 12 in evidence.

Is that your signature?

A Yes, it is.

Q And is that the address and Social Security number that you were presented with?

A Yes, it is.

Q And this is from Forest Gary; correct?

A Yes, sir, it is.

Q Sir, you used to work for OTB; is that correct?

A Correct.

Q For how long a period?

A Two years and a few months.

Q And when did you leave?

A The middle of July, I believe.

Q And did you -- I'm sorry -- what was your position on March 23rd?

A I was a branch manager of that office.

Q And had you known Forest Gary before that?

A Yes, I did.

Q And do you know the defendant?

A Yes, I do.

Q What name do you know her as?

A Now, as Connie Rodgers.

Q What name did you know her as when you were working for OTB?

A It began as Annette Lehman. That was the first name I knew her by.

Q Did you ever know that she had a first name of Connie and a last name of Rodgers at all until you left OTB?

A I found out her first name was Connie. I didn't find out Rodgers until the story broke.

Q Had you seen Forrest Gary before that date?

A This is March 23rd?

Q Yes.

A Yes.

Q Had you cashed Superfecta winning tickets for him with identifications other than Forrest Gary's name and address?

A Prior to this date?

Q Yes.

A I don't remember whether it was prior. I did cash tickets other than Forrest Gary. I don't remember whether it was before or after this particular one.

Q Could you tell us some of the identifications which --

MR. BOBICK: Objection.

THE COURT: Sustained.

MR. BOBICK: I ask another ruling for the

jury, that any statements between him and Gary are certainly not binding on this defendant, especially since she was not present and there is no indication she was present during these illegal conversations.

THE COURT: I think the question is not the conversations but the use of the identification.

Conversations, ladies and gentlemen, outside the presence of the defendant by someone not in the courtroom are not proper evidence and I am trying not to let anything of that sort in.

MR. BOBICK: May we find out from him whether she was present during the illegal transactions?

THE COURT: In due time.

Q Was she present?

A This particular day -- I suppose not. I don't remember for sure. She could have come in and left or been at the door. I don't know if when Forrest handed me the I.D. she was there that particular second.

Q Did you take any money from Forrest Gary for doing this?

A Yes, I did.

MR. BOBICK: Objection, your Honor. And again, I move for the ruling; it is improper,

irrelevant and not binding on this defendant.

MR. MEYERSON: I will stop now and if the defense does not go into it I won't.

THE COURT: It is not a conversation but an act. I think it is proper.

Come to the sidebar.

(Sidebar discussion.)

THE COURT: I just want to be sure you have the information --

MR. BOBICK: He gave them to me but I never saw them.

THE COURT: We will take a recess.

(Conclusion of sidebar discussion.)

(Following held in open court.)

THE COURT: We will take a five-minute recess.

Please do not discuss the case or talk about it in the jury room.

(Jury excused at 1:55 p.m.)

MR. BOBICK: Your Honor, while the jury is out -- Mr. Meyerson says this may be his last witness. If so, we should be fairly close. Are we going to sum up and charge today?

THE COURT: Yes.

(Recess taken.)

(Jury not present.)

MR. BOBICK: We are ready, your Honor.

THE COURT: All right. Bring in the jury.

(Jury entered jury box at 2:10 p.m.)

I R A U D E L L, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION

BY MR. MEYERSON (Cont'd):

Q Mr. Udell, did you receive any money or anything for your services from Mr. Gary?

A On this particular occasion?

Q On any occasion.

A Yes.

This particular occasion I am not too sure, but I did receive money from him about that time.

Q About how much money did you receive from Mr. Gary?

A Altogether in the neighborhood of, I guess, $1900, $2100; in that area.

Q When did you first -- did you ever tell this to the FBI or to the Federal Government in any way?

A Yes, I have.

Q When was that -- about the taking of money?

A I had told them originally that I had taken some money. I updated it yesterday.

Q That conversation was with me; correct?

A Correct.

Q And before we started speaking you said "I have something more to tell"?

A Right.

Q About what happened; is that correct?

A That is correct.

Q What did I say to you at that time? I made a promise to you.

A That no one would press charges -- that you wouldn't press charges.

Q That I wouldn't press charges if you told me the truth?

A Yes.

Q And you have told the truth?

MR. BOBICK: As he said before, the witness is under oath. Everything is supposed to be the truth.

THE COURT: Objection sustained.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. BOBICK:

Q Mr. Udell, have you ever had a nervous breakdown?

A No, I wouldn't call it that.

Q Ever go to a hospital?

A Yes.

Q What hospital did you go to?

A Parkway General Hospital, Miami, Florida.

Q How long did you stay there?

A Two nights.

Q And what was it for?

A I had a headache in a movie theatre on my vacation before I ever met Forrest Gerry.

Q He didn't cause the headache?

A No, he did not.

Q Well, when was the first time that you met Forrest Gerry?

A When I came back from that vacation.

Q Where did you meet him?

A At my branch office.

Q Did you ever tell anybody that you met him at the track?

A That I met him and talked to him?

Q Did you ever tell anybody that you met Gerry at

the track?

MR. MEYERSON: Where do you refer to?

MR. BOBICK: 302 dated June 13, 1973.

A I at one time did say that I had seen Forrest at the racetrack and that I met him at the track. I did say that at one time, yes.

Q Now, have you ever been charged with any of the crimes that you have committed in the course of your association with Forrest Gerry?

A No.

Q Never been arrested?

A No.

Q You haven't been threatened with arrest?

A No.

Q Did anybody ever threaten you with arrest?

A Only if I didn't tell the truth.

Q I see.

They said, "You tell the truth or else we'll arrest you"?

A "Or else you may be setting yourself up, if you don't tell the truth," I could be perjuring myself.

Q The crime you would commit would be like perjury?

A Whatever I would be lying about would be the same crime.

Q Well, did anybody ever threaten you with accepting

bribes?

A How do you threaten someone to accept a bribe?

Q Don't you know it is against the law for a person to take a bribe?

THE COURT: You mean, did anyone ever threaten him with prosecution?

MR. BOBICK: Yes.

Q For taking a bribe?

A Not in so many words.

Q Tell us what words they used.

A I assume if I did anything wrong it would be in that regard; taking money for -- I don't call it a bribe. I prefer to call it a gift.

Q A gift?

A For a service rendered; right.

Q For a service rendered.

Well, did the gift come for allowing Forrest Gerry to use the name Robert Haskell?

A Not originally but it turned out that way.

Q Did you take money from Forrest Gerry for using the name Robert Haskell?

A Yes, I did.

Q And did you cash Superfecta tickets for Forrest Gerry when you knew he was not using the identification of

Forrest Gerry?

A Yes, I did.

Q Besides Robert Haskell -- how much money did you give to Forrest Gerry while you say he was using the name Robert Haskell?

A I believe I paid him out on one occasion.

Q How much?

A A lot of money; six or seven checks. They went up to $10,000 so it had to be an appreciable sum.

Q You testified to this before a Grand Jury, didn't you?

A I wasn't asked this before a Grand Jury.

Q You were not?

A I don't remember being asked this before the Grand Jury.

Q Did you testify before the Grand Jury July 16, 1973?

A If you tell me I did -- I mean, I don't remember the date.

Q What?

A If you say I did, I did. I don't write down the date.

MR. BOBICK: Page 5:

"Question: You did at least on one occasion cash

tickets for him in the name of Robert Haskell?"

Do you remember being asked that question and giving this answer:

"Answer: One time."

A If I said it, I believed it. At that time I thought it was so.

Q Let me get something straight. Have we ever spoken before?

A No.

Q Have I ever talked to you?

A No.

Q All I know is what I am asking you now --

A Right.

Q Did you ride in a car with Forrest Gerry to take him to a bank to cash the checks?

A Robert Haskell -- yes, I did.

Q Did he give you a hundred dollars for that?

A He gave me more than a hundred dollars for Robert Haskell.

Q Well how about anybody else's name? Did he give you money for anybody else's name when he cashed it?

A Yes.

Q Did he get down to using Lynnette Lehman -- Annette Lehman -- I'm sorry.

A That was one of the first. There were only three or four. That would have to have been one of the first.

Q Was Constance Rogers with him at the time he cashed that?

A Like I already said, I don't remember if she was there, in and out of the branch or wasn't there at all.

Q Do you remember being asked these questions in front of the Grand Jury?

(Pause.)

MR. BOBICK: I am sorry, your Honor.

THE COURT: That's all right.

(Pause.)

MR. BOBICK: I'm sorry. I withdraw that question. It wasn't before the Grand Jury.

Q Do you remember having an interview with Mr. Geneturco, the FBI Agent on August 29, 1973?

A I was -- I talked to Mr. Geneturco a few times. Again, I don't remember the dates.

Q And do you remember Mister -- by the way, when was the first time that Mr. Gerry showed you the identification for Annette Lehman?

A I believe it was a couple of weeks prior to this.

Q A couple of weeks prior?

A Right.

Q And was Mrs. Rodgers present at that time?

A I don't -- again, she wasn't at the window. I can't say she was not walking around behind the window or outside the door or walked in the branch and out. She wasn't out the window at that given time.

Q Did you, August 27, 1973, tell Mr. Geneturco: "The female known as Annette Lehman was not present when I was talking to Mr. Forrest Gerry"?

A I just said that but it doesn't mean she wasn't there at all.

Q Do you know one Joseph Pullman?

A Yes.

Q Did he ever give you money for cashing tickets?

A No, I never cashed tickets for him.

Q Did he ever give you money for clearing windows so he could bet?

A He did tip for clearing windows so I punched out his tickets.

Q Did anyone ever call you up and say -- I am paraphrasing -- "Ira" or "Mr. Udell" or whatever name he knew you as -- "Look, if Forrest Gerry comes in and bets on certain tickets, I will give you 200 bucks if you tell me what he bet on"?

A Yes, but that wasn't Pullman.

Q I said somebody.

Who was it?

A A man by the name of Howie. I don't remember the name.

Q And he called up and said, "If you tell me how Forrest Gerry bets I will bet" --

A Right.

Q Did you collect money from him, too?

A Yes, I did.

Q Did you ever call up anyone and tell them -- other than Howie -- how Forrest Gerry was betting?

A I must have called up somebody.

I can imagine that I called up another branch manager, "Hey, this is what the guy is doing today," or "Isn't this neat," or "Follow this in the paper tomorrow."

Q Did you ever bet on anything that Forrest Gerry bet on?

A No, I never bet what Forrest told me to bet.

Q You bet while Branch Manager of OTB?

A Yes.

Q Were you allowed to bet?

A No.

Q To accept gifts?

A No.

Q Were you allowed to give tips?

A I never gave anybody tips.

THE COURT: He said he gave one.

Q I am talking about a tip on a horse as distinguished from a gratuity.

A I don't call that a tip.

I called up a lot of people to tell them what various people bet during the day.

If a man bet a hundred dollars it is interesting. If the horse wins I got a hundred dollar ticket on him.

Q Did you win or lose?

A I always came out losing.

Q Let's get down to the defendant on trial, Constance Rodgers.

Do you have someone working for you by the name of Phil Nelson?

A Not any longer.

Q You are not with OTB --

A Right.

Q We are talking about 1973.

A Yes, at that time.

Q Did Constance Rodgers -- using any name you want -- ever cash any Superfecta winnings at your office?

A Ever?

Q Ever -- e-v-e-r.

A With me?

Q Yes.

A I can only answer for me.

Q That's all you can answer for -- you.

A I believe I remember one occasion.

Q And when she cashed on this one occasion was it before or after you say Forrest Gerry used the name Annette Lehman?

A I don't remember.

Q You don't remember.

When you cashed this one ticket under any name or on any occasion did you fill out a 1099?

A No, I don't believe there was a 1099 involved.

Q So there was no identification given to you at any time?

A Right.

Q And the only time that you, of your own personal knowledge, know that she cashed a Superfecta, you say there was no 1099 involved?

A That is what I remember.

Q Is there any memorandum, piece of paper, scrap of paper, indicating where and what name was used?

A No, because no name was necessary.

Q Well, did you ever see on this one occasion -- you say that that was the only time you ever knew that she cashed a Superfecta --

A That was the only time I ever knew that she personally cashed a ticket and I paid her.

Possibly, my shift manager, possibly my supervisor would have told me she was in the night before and cashed a ticket so I might have known she was in and cashed tickets before but I only handled one and it wasn't with the 1099 Form.

Q Did anybody ever tell you that Constance Rodgers filled out a 1099 for winning a ticket --

A Under the name of Constance Rodgers?

Q Under the name Constance Rodgers.

A No.

Q Were you present at the time that you say that somebody told you she cashed it under a different name?

A If I was present no one had to tell me. This would have to be the next day that somebody would tell me. If they did, I don't remember.

Q So therefore, you never saw Constance Rodgers show you any identification?

A No, she never showed me any identification.

Q And you never saw her use any other name at all?

A No, I never saw her use any other name.

Q And the only time you know anything about Annette Lehman, it belonged to a man by the name of Forrest Gerry?

A That is correct.

Q Is that correct?

A That is. He used her identification.

Q Well, you don't know it was hers. You saw him use identification --

A With her picture. I assumed it was hers.

Q And if I may -- by the way, what was the identification that Mr. Forrest Gerry showed you?

A For her?

Q Yes.

A It was called the civilian I.D. card.

Q Is this it (indicating special I.D. card)?

A Let me see.

(Document handed to witness.)

A No.

Q Not that?

A No.

Q How about this document?

(Document shown to witness.)

A That I may or may not have seen.

MR. BOBICK: Referring to Defendant's Exhibit C.

THE WITNESS: No, I did not see that; definitely not.

Q You didn't see this or that (indicating)?

A Right.

Q So, the identification, whatever it was, that Forrest Gerry showed you of this woman defendant, Constance Rodgers, was not the identification that I just showed you?

A That's right, it was not.

Q And it was not the -- I'm sorry -- you never saw her with any identification?

A No.

MR. BOBICK: No further questions of this witness.

THE COURT: Anything further, Mr. Meyerson?

MR. MEYERSON: No, your Honor.

The Government rests.

THE COURT: Any sur-rebutal, Mr. Bobick?

MR. BOBICK: Well, your Honor, if not, may we have a recess which I will use for one purpose or another?

THE COURT: We will take a short recess.

The jury will go back to the jury room and please do not talk about the case yet.

(Jury excused at 2:30 p.m.)

(Continued on next page.)

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MR. BOBICK: He can deem the motion made and also deem it denied.

Are you holding us to a time?

THE COURT: If you can finish within 30 or 40 minutes each, I will be able to charge this evening.

MR. BOBICK: Would you send them out this evening?

THE COURT: Yes.

(Recess taken.)

(Jury entered jury box at 2:40 p.m..)

THE COURT: Mr. Bobick, any sur-rebuttal?

MR. BOBICK: No sir.

THE COURT: We will proceed right to the summations and as I told the jury at the beginning, the order is reversed; defendant sums up first.

MR. BOBICK: Mr. Palmiere and ladies and gentlemen of the jury:

We have come to that part of the case which the Court referred to as the summations and the summations are not a very mysterious thing. In fact, it is just what the word says; it is an opportunity for the attorneys for the respective sides to give you a summary of what the witnesses in this Court testified to in this case.

The summary that I'm going to give you, in good

faith, will be as accurate and truthful as I can remember.

If I say something to you which is not in keeping with the recollection you have of that incident, your recollection controls. Your recollection is what binds and if you have a dispute between yourselves then at that point the Court will order the minutes to be read and you can settle it yourselves. But if it is a question of what I say and you remember differently, your memory controls.

On the law we have here in the United States the United States District Attorney speaks for the government, if he wishes to. He speaks second in the closing. The defendant speaks first and the United States Attorney speaks second.

Therefore, after I get done it is going to be your recollection as to what facts I bring out, if they are as you remember them and your recollection as to the testimony which will have to stay with you because Mr. Meyerson will follow me and then the Judge will follow Mr. Meyerson.

You the jury are the judges of the fact. You the jurors will determine from what you heard and what you saw and what exhibits were admitted, the facts in

the case.

The Judge cannot tell you what to find. He can tell you the law and it is your duty to follow the law as he gives it to you. But you are the judges of the facts.

In America, the defendant has a right to be tried by a jury of peers. She has a right to have a verdict from the jury who are able to listen to the facts and decide on them from what they remember.

Whatever I say, whatever Mr. Meyerson says, what the Judge says, as to the facts does not count. Your recollection controls.

Again, before I start the summations I'd like to thank you for the courtesy and attention you paid to the witnesses and attorneys in this case and the Court and the defendant because being a juror is one of the toughest jobs you can have but one of the most important function in keeping the judicial system going.

Therefore, on behalf of myself and my client I thank you for your courtesy and attention.

The charge against the defendant is not having an affair with Forrest Gerry, not being a woman or anything else but there are three counts charged: April 2nd, April 4 and April 5.

What Forrest Gerry did has nothing to do with the charges against this defendant and I think you, using the same common sense you use in everyday life will be able to cut out the smoke screen and get down to the one fact involved in this case: Did this defendant willingly and knowingly violate the statute.

The Judge is going to charge you on the law. You have to follow the law as he gives it to you but you have to use your common sense, your recollection of the facts and apply the law to them to determine whether or not the government has proved guilt beyond a reasonable doubt.

I am not going to charge you on the law. It is not my business. It is the Judge's business. He will charge you but you and only you are the sole judges of the facts.

What are the facts that we have in this case? The first witness called by the prosecution was a Mr. Mallin, from the FBI, who testified that he interviewed the defendant, Constance Rodgers and she gave him the name of Constance Annette Rodgers -- and the indictment charges Rogers -- it doesn't mean anything. The fact is he said that was the name she gave him.

The second witness called by the prosecution was

Rosalind Friedman and she is an employee of OTB and she testified that on March 21st, 1973 she worked at branch number 29 and at branch number 29 in came the defendant who she identified as Constance Rodgers and Mrs. Friedman said Constance Rodgers handed her a driver's license and a metal social security card plate -- may I have exhibit 1, please -- and they introduced the 1099 in evidence and if you look at the 1099 in evidence you see the signature of Rosalind Friedman and you see social security number 534204836. But if you look at defendant's exhibit C in evidence, that number appears -- but not where the social security number is -- that number appears next to the name [redacted] and the social security number is 161305868.

Now, if this identification card was given to her and she copied the wrong name can you hold that against this defendant, Constance Rodgers? Remember, the key to this entire affair is the social security number.

You remember, as a woman, before you were married, when you went to work you got a social security number and if you were born Brown, the social security number was Brown. If Brown married Smith, the social security number remained the same. You now become Mrs.

So-and-So Smith but your social security number was the same number you had with Brown. The number, not the name is the important factor.

Now, if you give someone a number and you give them your number you can reasonably assume they are going to copy your number and you can reasonably assume that that is the number that is going to be charged when the tax time comes to pay.

We all saw Mrs. Friedman. I do not think that you can call Mrs. Friedman a brain. She remembers the driver's license but didn't write down the number. She is absolutely sure there was a driver's license but Mr. Nelson remembers it was not a driver's license, it was identification.

Mrs. Friedman said it was the first time she ever wrote this down. She didn't remember when the dates happened, when people became managers, didn't remember where she was. I think she did the best she could and --

MR. MEYERSON: Your Honor, it is not important as to what he thinks.

THE COURT: Ask the Jury to infer in terms of what was stated.

MR. BOBICK: (Continuing.) If I say something

you don't remember that way it is your recollection that counts. This is what I believe I saw and this is, what I believe the evidence shows. If you follow my line of thinking and you remember it the same way -- this is what I am asking you to remember.

So, Mrs. Friedman came in -- this was involving $1,400 -- and I think you remember she testified that she cashed some for $20,000 or large amounts. She didn't remember the names or numbers and Mrs. Friedman left.

We were then followed by Mr. Michael Sullivan, the next witness called by the prosecution.

Mr. Michael Sullivan testified that he was working at a different branch office, not the one Mrs. Friedman was working at but a different branch office. He was a cashier at OTB.

Mr. Sullivan remarked that he went down to the FBI headquarters and he had talked to Mr. Rosen before, another employee of OTB and they decided to pick out the wrong name because they didn't want to get involved.

Well, they picked out number 3 in the lineup. I think you remember that. The picture is available; all the exhibits are certainly available to you. You can take them into the jury room, look at them. They

are yours for your visitation and inspection.

Mr. Rosen picked out number 3.

Two individuals went down to FBI headquarters for the purpose of identifying -- it is not important whether or not they identified this defendant at that time but the question is -- it is a question of their reliability, of their ability to remember; their ability to observe, their credibility. This is what we have to look for, not what they said but what their actions and statements showed.

Two individuals said "We are going to the FBI and we are going to lie" and they went to the FBI and lo and behold they both picked out the same face and one of them, Mr. Rosen, said "I had a friendly chat with the FBI" -- you can remember that -- "Look," he was told, "You picked the wrong name, wrong person. It couldn't be her. She is an FBI employee and at this point we are going to put you before the grand jury and if you commit perjury we are going to send you to jail."

Mr. Rosen testified it was a friendly conversation. I don't think it is but what I think doesn't really count.

At that point, Mr. Sullivan remembered Constance Rodgers. He remembered Constance Rodgers and the fact

that she came there and the basis of his memory of course, is his testimony. You have the opportunity of determining whether he is telling the truth, whether he is reliable, whether or not he is worthy of belief, to the extent that you can convict a person, among other witnesses and evidence. But you heard him. You can judge him. You can use your same common sense you use in your everyday business affairs in determining whether or not he is believable.

The next witness was number 4, Mary Grannum and I think she was an important witness because she told us that her identification was taken away in December or January, the beginning of the year, the previous year and she had someone using her credit cards. She had to go to a department store -- I forget the name -- I think it was Bamberger's -- and she had to fill out an affidavit and lo and behold when she looked at the signature on 3 and 4, that signature was not the person whose signature was on the credit card about which she had to fill out the affidavit in Bamberger's.

I think you can draw the inference that it was not this defendant. Then, where did this defendant get the card? We will go into the testimony in a little

while and Mr. Pullman's testimony as well.

But, we have another factor. We have Mr. Sam Rosen. I think you remember him. I don't think you can ever forget him.

Mr. Rosen testified to the fact that he also did not want to get involved and I don't have to go into details as to the contradictions in that man's testimony. I think as sure as any of us are breathing here you remember that testimony as though it was this morning. It cannot be forgotten. He lied; he lied from the beginning, he lied in the middle and he lied at the end because the last thing he said was "I never lie." I don't think you can ever forget that and Sam Rosen who is a manager of the OTB --

MR. MEYERSON: Your Honor, I believe defense counsel is incorrect in pointing to someone and saying "He is a liar" according to recent cases.

THE COURT: There are limits on that. I think Mr. Bobick is within what is proper advocacy.

Proceed.

MR. BOBICK: (Continuing.) I think that you have to remember Mr. Sam Rosen. He lied to the FBI when he picked out the wrong woman. He lied to the FBI when he said it was number 3, according to him and

he lied to you when he told you he had a friendly chat with the FBI. He lied to you when he told you he never lied but your recollection controls.

Now Mr. Rosen and Mr. Sullivan and Mr. Ira Udell and Miss Joan Siegel and Mr. Nelson, Phil Nelson, are employees or were employees of OTB.

OTB is not on trial here. Whether they should be or they will be or are somewhere else, we don't know and it is not involved in this case but we heard from Joan Siegel who violated the law by taking gifts.

We heard from Ira Udell that he took bribes.

We heard from Sam Rosen that he made up with another OTB man to go down and identify the wrong person.

We heard from Mrs. Friedman that she was the one who filled out the 1099 and I don't think there is any question in anybody's mind that she signed it. It is there.

But remember, she didn't remember the table, she didn't remember Phil Nelson and you heard from Phil Nelson that he was the one who took the identification.

Now, remember procedure. Would it be proper for somebody who is working for OTB to take identification

in the name of Annette Lehman and give it to somebody you know as Constance Rodgers? I don't know. That is not for me to say. But you use your common sense.

Would it be logical for him to get up on the stand and say "Oh, sure. I knew her as Connie, I knew her as Connie, I knew her as Connie and when she gave me the identification she said the name was Annette Lehman and of course I believed her name was Annette Lehman because of the fact I worked for OTB." Is that the kind of proposition you can believe? Is the man trying to protect his job regardless of who he hurts, what he hurts or what harm is done? Well, you are the judges of the facts.

MR. MEYERSON: Your Honor, I must -- it is clear Mr. Nelson never said any such thing.

THE COURT: Well, the jury's recollection governs.

MR. BOBICK: This is the third time I am being interrupted and I don't think I did anything the first time.

THE COURT: The first time you said "I think" and technically, that is not right.

Go ahead and we will hope there are no more interruptions.

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The next record that came down was from Rose DiSeria. She testified she is an IRS agent. She checked the records and it shows the 1099 was filed up there. Of course, whether or not the statement that was given to OTB was the statement that was sent to IRS -- you are the judges of the facts.

You will look and listen to the law as the judge charges and follow that law as to whether or not the People have proved beyond a reasonable doubt that the defendant read the statement or had known about the statement or signed it. That is up to you.

The next one who came down was vice president, Mr. Shagan.

You remember Mr. Rosen said he never lied. You remember he testified that he wrote a check for $18,000. He remembered the $37,000 and the statement in the books and check are all in evidence and you can determine whether he wrote them or not.

The next one after Mr. Rosen, was the FBI agent, Mr. Nick Geneturco.

I want to tell you something. In America, we are very fortunate that we have a judicial system such as in this court and an organization

like the FBI. That is an organization we should all be proud of. They protect us, save us and keep us pure and I tell you, without hesitation or being a hypocrite or anything else, I say they are the finest police organization that exists in the world. And when an FBI agent gets on the stand you get the truth.

Everyone is a human being and an agent -- anybody may forget a detail -- but he will never lie to you and I tell you this as a fact. The judge may not like it but I tell you as a law, the FBI agent will be truthful and what he says you can take as gospel. He will tell you the truth and what he told you was the truth. He may have made a mistake but it was the truth. It wasn't a lie.

The other witnesses, you should look into their motives and reasons for lying, but when it comes to the FBI agent you don't have to. If the FBI agent said -- whatever the FBI agent said, that's the truth. I give it to you that way. And he didn't say anything about it. There is no question that we had a dispute. I had a dispute with the agent and the dispute dealt with

the reading of the language; whether or not there was a comma, "I had one ticket which I cashed, at Yonkers" or "I had one ticket, which I cashed at Yonkers."

There was a dispute as to the comma. I read it that way. I read it and he read it the way he read it but I want you to believe, please, that the situation he told you about was the way he remembered it.

Then came the defense witnesses.

Mr. Phil Nelson, I had never spoken -- and he told you -- with Mr. Nelson before. I never met him before and knew nothing about him. You say "How can you, a lawyer, put on a witness that you didn't know?" Because I have the feeling that people are good and I have the feeling that people without a motive will tell the truth.

Well, we heard from Mr. Nelson and up until such point as I feel it became a personal matter with him, as far as his own security is concerned --

MR. MEYERSON: I don't understand that but it is the personal remarks of counsel.

THE COURT: The question of remarks here were predicated on something the witness said.

MR. MEYERSON: It is not a comment on the evidence at all.

THE COURT: Let the jury remember that if Mr. Bobick says something is his belief, his integrity is not on trial.

He is trying to describe the evidence as he understands it and wants you to interpret it.

MR. BOBICK (Continuing): Mr. Phil Nelson, when Mrs. Rodgers -- forget the name --when she came in she gave him, not Mrs. Friedman nor the cashier, the identification card and the Social Security card. He said that the I.D. card was not the one he remembered because he remembered the picture was in technicolor, but the metal plate, the Social Security card and he testified that he went back -- and he also testified that it would not be the proper procedure and this was the situation that he said --it would not be the proper procedure for him to -- but he knew her all the time as Connie -- it would not be proper procedure for him to accept the identification of Annette Lehman if she told him that her name was Connie and he knew her as Connie.

So, for what reason did he say it didn't happen that way?

Realistically, if the card contains the correct number, 161-3058 68, then the credit or charge, whatever it is that is involved in IRS would realistically be placed at the right door, whatever the name was.

So, Mr. Nelson testified that there was one occasion that she won and that on that one occasion she handed him the identification and he also testified that it was not the driver's license which was a sort of conflict with what Mrs. Friedman said. But you remember the testimony.

The next witness, and I think you can -- before I go to the next witness -- I think you remember from the cross-examination of Mr. Nelson the description of the place, the card table, the signing of the forms, all of which Mrs. Friedman never remembered which we questioned. I think you can remember that and your recollection of that will control.

The next witness was Constance Rodgers.

Constance Rodgers is the defendant in this case and when the Judge comes to charging you on the law I am sure you are going to find that she is an interested witness. There is no more interested

witness in this whole world than the defendant because she has more to lose or gain by whether or not you believe her. There is absolutely no question about it. But I think you will also realize that just because she is an interested witness, and while you should examine and remember her testimony, you have to use your same common sense that you use in everyday life. You have to use the same experiences you use in everyday life and you have to determine whether or not what she said was believable or whether or not it was unbelievable.

What did we have from Constance Rodgers? We have a situation where she is a woman who had a previous conflict with the law, except she says it is still being appealed. It is not over yet and she insists she is innocent. But she also insists she is innocent on this charge and the situation is you have to judge her.

She is not on trial for being in love with Forrest Gary or being a horse player or leaving her daughter in Pennsylvania and coming here. And she is not on trial for anything else except the charges; the charges that are presently charged against her. That is what she is charged

with and she told you exactly what happened and the evidence -- and I think you can find the evidence supports each and every statement that she made, each and every statement when she went and spoke to Mr. Nelson wherein she gave him the Social Security number and the identification and she said to him "It's my maiden name. I cannot find my identification. Can I use it?" And the Social Security number was the same. Under whatever name it was used, the number was the same. So, she gave it to him and then when it came to Mr. Rosen, whom she had never seen before and Sam Rosen said he had never seen her before, she came there and said "The Bear sent me over" -- I forget the words -- your recollection controls -- "The Bear gave me the tickets and identification. Should I sign it with my own name? Should I sign it right?" He said "No."

Common sense. Would he get on the stand and say "Somebody asked 'Should I use the right name'" and he said "No." He is a manager of OTB. How long would he be manager? How long is he the manager now?

She testified they went there, did nothing improper. She offered to sign her own name, intended to give her own name and address; did somebody a

favor and for this she finds she is charged with a crime.

Now, an opening statement by a lawyer is not evidence and I owe you something in the evidence that I would prove and which I stated to you in the opening, and that opening statement should be like a due note, but I cannot pay that note. I couldn't prove that Mr. Pullman was a Government informer and I apologize, but what I say is not evidence. Your recollection of what the evidence is what you can remember and what you heard from Mr. Pullman.

I don't want you to draw, and I am not trying to infer anything by his taking the Fifth Amendment. I don't think any inference should be drawn from that. But when I asked him "Did you give this identification and winning tickets to Mrs. Rodgers" the answer was "I refuse to answer."

You cannot draw from it. He has a constitutional right -- just as the defendant has a right to a fair trial -- he has a right to use the Amendment of the Constitution to protect his interests. I couldn't get an answer.

"On the 4th, did you give the tickets to

Mrs. Rodgers" and that answer again is his constitutional right, his right to say "I don't want to answer that."

THE COURT: Don't emphasize what you are saying.

MR. BOBICK: I couldn't prove what I said I would prove. If you hold anybody, hold me, not the defendant. I gave you the promissory note and I couldn't deliver it and that is the answer. But the defendant is on trial. I am not on trial here. It is what the defendant did and did not do that is going to determine in your mind whether or not the Government has proven her guilt beyond a reasonable doubt.

After Mr. Pullman testified and the defendant tells you the story -- and the witnesses that were brought in also had never spoken to us before out of the courtroom -- and they told you the story -- then the People brought in Joan Siegel.

I don't have to refresh your recollection as to Joan Siegel's testimony. It was only a short time before.

I think you remember Joan Siegel. I think you remember Ira Udell. These are the people that

the Government wants you to believe.

You know, when a person puts a witness on the stand you can pretty well assume that if it is their witness and the witness has been talked to by them, that that witness is supposed to be believable.

Would you say that Ira Udell was believable? Would you say that a man, manager of OTB and who is collecting payoffs from one guy, taking false identification with the other hand, and calling up and giving tips and information and taking money from someone else, is believable?

Joan Siegel -- a woman -- and I don't know what Forrest Gary is supposed to be; a lover, a demon or what. But he is a man. Here's a woman who has been in touch with him, received a gift from him, who couldn't remember the fact that she spoke to him yesterday, and the Government says "Believe her."

Ladies and gentlemen, I have taken too much of your time but I want you to know that I appreciate your listening to me. I appreciate your attention to the witnesses, your listening to the summations in this case.

You are now going to hear from Mr. Meyerson and everything I said, I believe he will take and chop up in fine pieces. That's his job. After you hear from him you will hear from the Judge. This is the last opportunity I have to talk to you.

I'd like to say this: When you go into that jury room and deliberate I want you, because you are the judges of the facts, to remember each and every point that I have covered and didn't cover; what I mentioned and what I forgot to mention because that is what you are going to judge this on. Not what I said, not what Mr. Meyerson said, but what you remember is the evidence, and I am sure that when you do remember what the evidence is you will come in with the only possible verdict; Not Guilty.

You can take with you all of the exhibits, the bill from the garage for Mr. Pullman, the dispossess for May, the paid bill for June, the wedding certificate from Pennsylvani, the Social Security card and the identification, plus any of the Government's exhibits; any exhibits you can look at to examine, to tie it in with the

testimony that you heard from the witnesses.

Again, on behalf of myself and my client, thank you very much.

THE COURT: We will take a five-minute recess before we begin the Government's summation.

Please do not talk about the case.

(Jury excused at 3:15 P.M.)

(Recess taken.)

(Continued on next page.)

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(The jury entered jury box at 3:20 P.M.)

THE COURT: All right, ladies and gentlemen, we are now ready to hear Mr. Meyerson's summation.

MR. MEYERSON: Your Honor, Mr. Bobick, Mrs. Rogers, Mr. Foreman and ladies and gentlemen of the jury:

The defendant took the stand. I submit she admitted every element of the crime.

There are three different crimes. You can come in with an acquittal on one, guilty on the others, all guilty or acquit on all but it is three separate times.

Mr. Bobick just said the witnesses are lying -- and each one said that it was Miss Rogers who was there -- going through a lineup, photographs, vigorous cross examination but that held up. The witnesses held up and what was left to do?

So, she took the stand and said, "I did it, but I don't know nothing. I was just doing a favor."

I submit, ladies and gentlemen, that even if that is true -- I cannot comment on the law, you will hear the law from the Judge -- even if that is true she is guilty of every count, but inaddition to that I will comment further.

Let's talk about the good faith or bad faith

of this woman who says it was only a mistake.

You heard the testimony of different copies, one to the Federal Government and the Federal Government received it and it is within the jurisdiction of the IRS. There doesn't seem to be a question about that and another copy was given to the defendant, not once, but three times, and she has had it all this time and she went up on that stand, having it in her possession, I assume, or knowing about it, knowing that not only on March 21st do we have a wrong Social Security number, but a wrong address and how would we have a wrong address? In the identification which the defendant tried to show every witness, didn't have this address.

Even if identification has 9713 and that is not her address either.

Now, ladies and gentlemen, do we get two 1099's, both made out to Annette Lehman with the same wrong social security numberand the same wrong address -- because the defendant testified that these were the only identification she ever had or has now in the name of Annette Lehman.

Well, if that is true, how did they get a different -- it isn't the same from the identification

to the 1099's. All right. A mistake once, but how could it be compounded?

Mr. Udell was not brought on the stand to have you believe that the defendant was there at the moment that the Annette Lehman identification was given. He said she was there; that she was there with him. She might not have been there at that exact minute.

The point is that the one thing Mr. PUllman did say is that he never gave anyone identification of Annette Lehman and Mr. Udell said that the identification he received was not that at all. It has to be other identification. There has to be other identification.

One was used by Annette Lehman and another one was used by Forrest Gerry and you heard how close they are. I won't go into that.

How does the same mistake become compounded and yet, there it is.

The defendant has set herself up against every witness that was brought into this courtroom; the Government witnesses, the defense witnesses. I wont give my opinion. I won't say she is lying. I will merely comment on the evidence. I will merely

tell you what everyone else has said and what she has said. Who will you believe?

Now, Rosalyn Friedman said that she saw the defendant; picked her out of a lineup. Vigorous cross examination made Mrs. Friedman look -- well, youkhnow, there were some things she wasn't quite sure of; some dates. Do you remember dates? Do you remember where you were last Thursday evening at 9 o'clock or at 10? Would you remember if you were an OTB clerk and you had someone cash a large amount of money, someone you had seen before come in and was there for a while, well, you would remember that.

Then, it was admitted "Yes, she was."

But then, Miss Rogers says Mrs. Friedman was never there. She never saw her.

Mrs. Friedman not only identified the defendant, she looked at her 1099 and she saw the signature. She said that she did it and she had come out and met her, filled it out and she left. Who was lying?

Mr. Nelson from the same branch was called as the defendant's own witness. He was the man who Connie Rogers said she dealt with; filled out the 1099's, cashed tickets, did the whole thing -- and what did Mr. Nelson say? Mr. Nelson says, "I never

saw that 1099. I never signed it. I recognize the signature of Mrs. Friedman and that is her handwriting and she did do it."

Every story checks out except the defendant's.

Now, the most important question.

Mr. Nelson was asked:

"Did Miss Rogers ever tell you that she lost an I.D. and that she had to cash with this I.D.?

"No."

That was the defendant's own witness.

Now, Sam Rosen and Mike Sullivan were both vigorously cross examined as to picking out the defendant, going over the lineup, going over photographs, going over if the FBI ever threatened them and yet is their story true? What is the lie? I don't understand why were they called liars?

Miss Rogers herself, got up and said, "It was me." So, where are they lying? I don't know.

Now, if they're correct about that and they were so vigorously cross examined, why would they lie about anything else or would they be correct as to the truth?

They were asked about "did the defendant ever say 'I am cashing for Pullman's girlfriend or the

Bear's girlfriend'" and they both said, "No." Why would they lie? What are the motives, if any, of these people -- you know the motive of Miss Rogers. What would be the motive of these people?

Mr. Udell, I can see a motive in that case and he testified he asked me -- he said, He had something more and he wanted to tell the whole truth and it was important that we get the whole truth.

He said, at that moment yesterday, "If I would tell you the whole truth would you prosecute me?"

I wanted the whole truth. Maybe it was an error but I said, "Okay, you tell the truth" -- I didn't know what it was -- "and nothing will happen to you" and he told me the truth. I don't understand what was his motive. No one knew. Why? Why come forward? Guilty conscience and wanting to relieve himself of that burden. A guilty conscience is terrible to live with as I am sure you know and we have all done minor things in our lives and worried for days over some slight we might have caused someone else.

So, who is lying here?

Now, Miss Joan Siegel came in and the cross examination -- I don't know what exactly they were

trying to bring out. She stated that she came in and used the identification of Constance Baker. There was not doubt in her mind that she had come, the defendant had come and it was $57,000.

Have you ladies and gentlemen ever seen $57,000 in your entire lives?

Talk about favors -- I ask you, in your common sense, in your common sense would you cash -- this says right here "United States information return" and then it has statements, and she took it home with her. She received it on both times. Certainly, if maybe she did it the first time she couldn't have done it the second time not knowing what she was doing-- "I certify that I am the true owner of the tickets presented and have submitted my true personal identification in support of the above disbursement to me and I understand that this information is for the Internal Revenue Service and any false statements or misrepresentations made herein is a violation of the law" and then it gives the penalty.

Do you believe she didn't even look at it after cashing $18,048? Do you believe this was just such an everyday occurrence to her -- "I will do you a favor" -- she didn't have anything to cover up?

She didn't want to get away from the tax or help Mr. Pullman get away with the tax or Mr. Gerry get away with the tax?

$37.876, two days later. Do you cash -- wouldn't it occur to you, in your common sense -- that is all I ask you to use -- in your common sense, do you do, someone a favor by cashing $37,000 and receive that money, sign a statement and not know what you are signing and work to have that in your possession all along and then get up on that stand and say, "I still don't know what I was signing and I never read this before."

That is what she said. She said, "I never read this before on the stand today." Could you believe that?

Here she was on trial. She was in a lineup before ever being indicted. She was indicted. You don't think she ever looked at one of those copies?

There was never any cross examination elicited that she did not receive those copies. She received them.

Judge as to the motives of these people. The motive of Miss Siegel -- she received a Social Security card. Not in anyone else's name which might

be valuable to some people but in her own name. It cost something like 50 cents to have something like that made up. This is a tremendous bribe; terrible.

Mr. Udell took money. He came to court and admitted it.

But as to Miss Siegel -- great thing to bring out in testimony. She took this (indicating).

Now, let's look at a very serious thing. He gave Miss Siegel the same gold identification card which Annette Lehman seems to have. Not the I.D. identified by any of the witnesses.

Mr. Nelson said -- and don't forget these are the only two identifications she said she ever had -- "this one definitely not." He never saw it before in his who life and this one, Mr. Nelson said -- and your recollection counts -- I recollect him saying that it is possible. It looked like that. Of course it is possible, because it is gold and it is the same type of thing; not with the true identification number and not this with the right identification but separate identification used and where did she get this to come into court with? The explanation: Miss Siegel got this to come into court with from Forrest Gerry. Isn't that what is logical? What

makes sense? No one identified this as belonging to Constance Rogers (indicating.) Either neither of them was or it is possible this was -- possible (indicating.)

Mr. Udell said he never saw those in his life, yet this is what Gerry, he says, used; a different one with the 9513 Horace Harding Address and a different I.D.

Now, what they needed, he said -- since this Social Security number was so different -- they needed a new I.D. to come into court with and to state, "This is the I.D. Don't you recognize it?"

They figured he wouldn't notice it. Who was going to say which one it was. It will be the same type.

Where did Forrest Gerry come off being able to get someone a United States Social Security card; name registered with the United States Government and an account number? May I ask you that? Wherever he got it, I submit that is how this one came out in court.

(continued on the next page.)

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Comparing those two, March 21st, Annette Lehman -- and she said she did use it -- why Annette Lehman? Anyone can say they are Mickey Mouse.

In some branches she was known as Constance Rodgers. In other branches she was known as Annette Lehman. As a matter of fact, in the testimony of some witnesses, Mr. Bobick kept yelling "Didn't everyone know she was Annette" and in other branches she said she was Connie. Why? Unless there was an ulterior purpose. Unless you are trying to hide something why call yourself Connie someplace and call yourself Annette in other places?

Everyone has a reason not to use a name. My name is Harold and I hate it. I use, Hal. But I don't say hello to someone as Hal one day and hello to someone as Harold the next day.

At the very best, let's suppose this identification was used. It doesn't have the address on it at all. So, another ID had to be given with the address. Everyone said this was not it except the defendant. But let's suppose it was. What does it say? 9713. What does this say? 9513. Okay. A mistake was made one day by one clerk. The same mistake two days later? Two days later when $28,000 was involved someone read

it wrong?

I think, if you look at it ladies and gentlemen, the exhibit is very clear. 97 -- how did both get 9513, unless there had to be a completely different set of ID's.

Miss Rodgers claimed these are the only ones and not only that she says, they were always in her possession in a drawer in her room. Gerry cashed it. She never thought it was lost. I will leave it up to you whether anything went on.

But as to the three dates in the indictment, there is no doubt whatsoever and why is the fourth day so significant? This April 5th with Joan Siegel and another $57,000 is not only important to show winnings now covering way upwards of $100,000 but much more than that, in this particular case -- because the defendant is claiming "I had no bad faith. I am telling you the truth. I am telling you the truth."

If you believe Joan Siegel then it means there is an intent there and a motive and a common scheme and a design and you may disbelieve her testimony that it was only a favor for Mary Crannum, a favor of cashing in someone else's name, keeping the copies and then testifying on the stand that you never read the copies

and you had no intention and you have no intent now.

One little thing: Always believe the FBI. The FBI agent said that Sullivan and Rosen were not pressured at the lineup and they said they didn't want to get involved -- not brought in together, getting the same story but one stayed and one went home.

Mr. Sullivan stayed, changed his story and he went home separately with an FBI agent who drove him home. That is why all the empty desks and large rooms, because Mr. Rosen was brought back late at night. He identified the defendant. Was he correct? The defendant admitted it and I leave you with Mr. Bobick's statement "Believe the FBI." I ask you to believe them also.

There is no way ladies and gentlemen this could have been in good faith. The ID's are not identified by anyone. Mrs. Friedman, and this is curious, was never even shown the ID's she was supposed to cash. Why not show it to Phil Nelson; Ira Udell? Why not show it to Mrs. Friedman? Because she was afraid of what might come out.

Thank you, ladies and gentlemen. I just leave you with those thoughts on the good faith and again, I submit, even should you find there was no bad faith as

to all three counts, as to all three days, I submit to you that the defendant has herself stated all the elements of the offense.

She admitted she agreed with the witnesses and even though she has good faith that doesn't enter into the fact of being guilty of a crime.

Thank you very much.

THE COURT: We will take another recess for five minutes.

(Jury excused.)

MR. BOBICK: May I take exception to Mr. Meyerson's summation on the grounds that Rosalind Friedman was requested back and never produced. We excused her coming and there was no testimony that they were there late at night.

THE COURT: That is a matter of inference.

MR. BOBICK: There is nothing to indicate that Mr. Udell did not copy the information from the first sheet to the second sheet.

THE COURT: Those are conflicting inferences and the jury will have to draw their own.

(Recess taken at 3:50 p.m..)

THE COURT: Bring in the jury.

(Jury entered the jury box at 3:55 p.m..)

* * * *

THE COURT: Mr. Meyerson, Mr. Bobick, Mr. Palmieri and ladies and gentlemen of the jury:

You have listened to a lot of evidence and have heard the arguments of counsel and now I will ask you to listen to me while I give you the instructions as to the law that applies to the case. I will use some written notes in doing it, because it keeps my charge in line with what I have done before, and what I think is as accurate as I can make it.

The jury, as you have been told, is the last word on the facts. However, you have to follow the law as I give it to you, and assume that I am right.

First, I will say something about general principles that apply to all criminal trials, and the nature of the charges in this case, and the specific rules of law that apply to the charges and then something about how to evaluate the evidence, a few comments on the evidence, and finally, how to reach a verdict.

You are to perform your duty as jurors without bias or prejudice for or against any party. The law does not permit jurors to be governed by sympathy

or prejudice or public opinion.

The law presumes a defendant innocent of crime, and the law permits nothing but the legal evidence received here in the courtroom to be considered by a jury in connection with a charge against the accused.

This presumption of innocence is enough by itself to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt, of the guilt of the defendant, from all the evidence in the case. If you are not so satisfied beyond a reasonable doubt of the guilt of the defendant, then it is your duty to acquit. If you are so satisfied beyond a reasonable doubt of the guilt of the defendant, then it is your duty to convict.

I will just say a few words about how the law interprets reasonable doubt.

A reasonable doubt is a fair doubt, based upon reason and common sense arising either from the state of the evidence, or the failure of the Government to prove the evidence on a material issue. A reasonable doubt does not mean a doubt that a juror picks on arbitrarily or capriciously, to avoid performing an unpleasant task, or because of natural

sympathy.

It is rarely possible to prove anything to an absolute certainty, or beyond a possible doubt, and the law does not require this.

Proof beyond a reasonable doubt is sometimes described by the Court as a doubt such as would make you hesitate to act in your own important affairs.

This proof beyond a reasonable doubt operates on the whole case. It does not mean that each bit of evidence must be proved beyond a reasonable doubt, but it means that the sum total of the evidence, the Government's evidence, the defendant's evidence, direct examination, cross examination, exhibits -- the evidence must satisfy you beyond a reasonable doubt, as to each element of the crime charged -- and I will describe those -- or else you must acquit.

Finding a citizen to be guilty of a felony, and subjecting her to criminal penalties, is serious, and you can consider this in deciding whether you have a reasonable doubt. But, if you are convinced beyond a reasonable doubt of the defendant's guilt, then you should find her guilty on the particular count that is involved, and not be swayed by sympathy.

Now, I come to the indictment. An indictment,

as I said before, and I will say again, is just a formal record accusing a defendant of a crime. It is not evidence of any kind. The fact that there has been an indictment does not create any presumption or permit any inference of guilt.

The defendant has pleaded not guilty and the indictment and the plea simply creates the issues which you must decide.

The indictment in this case consists of three counts, and I will read the first one.

"On or about the 21st day of March, 1973, in the Eastern District of New York CONSTANCE ROGERS, knowingly and wilfully made false, fictitious and fraudulent statements and representations and made and used false writings and documents knowing the same to contain false fictitious and fradulent statements, as to material facts, in a matter within the jurisdiction of the Internal Revenue Service, an agency of the United States in that the said CONSTANCE ROGERS at Branch 29 of the O.T.B. Corporation, 95-28 Queens Boulevard, Queens, New York, stated and represented and used false writings and documents in cashing winning

Superfecta tickets in that she claimed she was an individual named Annette Lehman, whereas in truth and in fact, as she then knew, her name was not Annette Lehman."

Count two is just like count one, except it gives the date of April 2, 1973.

And the location of 1501 Broadway, New York, and that she represented she was an individual named Mary Grannum, whereas in truth and in fact, her name was not Mary Grannum.

Count three is the same as count two, except the date is April 4th, 1973.

Each count is described as a violation of Title 18 of the United States Code, Section 1001. Section 1001 says:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick scheme or device, a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent

statement or entry, shall be fined or imprisoned or both."

I do not go into the penalties, although there has been discussion of it, because that is for me to determine on the basis of facts, not before you, if there is a verdict of guilty.

The essential elements of the crime, under Section 1001 are four:

First, that the statement was made or used by the defendant; second, that the statement was false; third, that the defendant made or used the statement wilfully and knowingly, and fourth, that the statement was made in a matter within the jurisdiction of a governmental agency.

As to the first, that the statement was made or used, if it was made or used, it is not necessary that the statement be one which was written by the defendant. It may have been written by an O.T.B. employee and used by the defendant in collecting money. If you find that is true, that would accomplish one of the elements of the offenses charged.

Second, and the second element is that the statement was false, and to constitute the offense of the using of false statements in support of a

fraudulent claim against the United States, it is not required that the statement be under oath. If they are made in a matter under the jurisdiction of a governmental department, and are intended to be acted upon, the falsity is significant.

So, it is not significant whether the copies signed went to the Internal Revenue Service or were kept in the office of the OTB Corporation, and the fact that Annette Lehman was once the name of the defendant, does not make it her name for all purposes. It does constitute a factor you can consider, in determining whether she knowingly made a false statement, and one of the items that the Government charges as relating to the knowledge of the falsity is, that there was a wrong address on the identification.

She is not charged with using a wrong address, but a false name.

Now, I come to the third element, which is that the defendant must have made or used the statement wilfully and knowingly and the word "knowingly" in a statute means that the act was done voluntarily and purposely and not because of mistake or accident.

Knowledge is a state of mind, but knowledge can

be proved by a defendant's conduct, and by all the facts and circumstances surrounding the case.

Another rule of law is that no person can intentionally avoid knowledge, by closing his or her eyes to facts which should prompt investigation.

The fourth element is that the statement was made in a matter within the jurisdiction of the Governmental agency, and you have heard the statute read which requires a 1099 statement to be filed in connection with payments over a certain amount; over 600 dollars on a $2 ticket and over 900 dollars on a three dollar ticket.

A false statement is material if it could affect or influence the exercise of a governmental function, or if it is capable of influencing a tribunal in a determination required to be made.

It is true, the Social Security number is an identification separate from the name, and perhaps Mr. Bobick is correct in saying that it is the key identification, but that does not mean that the name is immaterial. You may determine whether the name, as different from the name she was operating under in other connections, was material; also in the statement.

There is no requirement in the Section 1001 that the defendant present the material containing false statements directly to the Government agency involved. The only requirement is that the matter be within the jurisdiction of such department or agency.

So, if the identification was presented to the O.T.B. in order to induce the preparation of a 1099 statement, which was intended to be submitted to the I.R.S. you may find it related to a matter within the jurisdiction of that department.

It is not even necessary that the Government's reliance on the false statement be shown in order to constitute the offense of making a false statement. The 1973 income tax returns would not be due until 1974, and by then, the government may know, its information travels from one bureau to another, it may know about these facts of whose the winnings really were, but that does not matter if the defendant knowingly made a false statement to a material fact within the jurisdiction of a governmental agency.

I have described four elements of the crime. The Government must prove every element of the crime beyond a reasonable doubt. If it fails as to any

element, you must acquit. The fact that one element of the crime may or may not exist, has no bearing on whether any other element of the crime exists.

You cannot infer from the existence of one element or from falsity alone, that there was knowledge of falsity. If any element has not been proved beyond a reasonable doubt, you must acquit. If each of the elements has been proved beyond a reasonable doubt, you must acquit.

Now, I come to the evaluation of evidence.

Generally speaking, there are two types of evidence that a jury may consider in finding the truth as to the facts of a case. One is direct evidence, such as the testimony of an eyewitness; the statement of one ofthe O.T.B. agents that a particular identification was submitted and that it was represented that the defendant was either Annette Lehman or Mary Grannum.

The other is indirect, or circumstantial evidence, which is the proof of a chain of circumstances, pointing to the existence or non-existence of certain facts.

For instance, the fact that Mrs. Lehman, Mrs. Rogers, had her right Social Security somewhere on

the identification she presented, as Annette Lehman-- if you believe the exhibit here is the one she presented -- it may be some indication she was acting in good faith, because she might have known that even if the names were different, they might catch up with her on the Social Security number, and ultimately charge her on this income.

Generally, the law makes no distinction between direct and circumstantial evidence. Circumstantial evidence alone, may be enough to convict, if you are satisfied of the defendant's guilt on all the evidence in the case. Circumstantial evidence does not need to exclude every reasonable hypothesis of innocence. It is only necessary that a jury be satisfied of a defendant's guilty beyond a reasonable doubt, on the basis of all the evidence in the case, both direct and circumstantial.

Drawing inferences, is the proper function of a jury, if it is based upon your own common sense and general experience from any facts that you find were proved.

You do not leave your common sense outside when you go into the jury room. You can draw such inferences as you think proper not limited to those most favorable

to the accused, but you must weigh the inferences favorable and unfavorable, to see whether the evidence points to guilt.

If you are left with a reasonable doubt on any element, you must acquit, if you are convinced beyond a reasonable doubt on every element, then you must convict.

You are not confined to the bare bones of the testimony or the exhibits, but you can only draw reasonable inferences. You cannot base a verdict on conjecture or on suspicion. You cannot guess what testimony would be, and with respect to Mr. Pullman's testimony, he had a right to claim the benefits of the Fifth Amendment and not give answers and that leaves the case almost as if he had not testified.

You cannot guess as to what his testimony would have been.

I will say a few words about credibility of witnesses, because that is an important function, although it may not be decisive in this case.

When you weigh the testimony of various witnesses, you can consider the relationship of the witnesses to the government, their bias or

interest in the outcome of the case, their manner while they were testifying, their candor and intelligence as you have observed it.

Judging witnesses and testimony is not much different from what you do in ordinary life. People frequently will tell you things, or you may ask their advice, to influence you on important decisions and you have to consider whether the people you are talking to had the capacity and opportunity to observe and the intelligence to tell you truthfully whether they were able to remember the things they say happened, and whether they had any bias or prejudice.

You can consider the inherent believability of what witnesses say, whether it accords with your own knowledge or experience. You can also consider the extent to which any testimony has been confirmed or contradicted by other credible witnesses. You can consider inconsistencies within the testimony of any witness, either on direct examination or cross examination, and whether any witness has changed his testimony.

If a witness has lied or made a mistake, you can say you won't believe anything that witness testified about, or you can say that part of what the witness said on the stand, may be true, and you will

accept that part and reject the rest.

So with respect to Mr. Sullivan and Mr. Rosen, you can say, if they lied to the FBI after the lineup "I won't believe them at all" or you can say "They lied once, but were telling the truth on the stand in whole or part."

That is part of your function as jurors in judging the testimony and determining credibility.

A few words especially about the defendant. A defendant does not ahve to testify and I mentioned at the beginning, that the defendant may present himself as a witness, and Mrs. Rogers did. In that case, she becomes subject to cross examination as you have observed, and her credibility is for you, as the jury, to determine in the same manner as other witnesses.

You can consider that a defendant has a strong motive to tell the kind of story that will protect herself, but you can also consider that in dealings between two peoples, she is the only other person who can give her version. She is taking the risk of cross examination and you are to decide whether to believe the defendant, how much of her story to believe, and how much effect it has in the

light of the law as I have described it.

There is a rule that applies that if you find there was a false explanation made.

Mrs. Rogers was quoted, I think, by Agent Geneturco, as saying at one time, she only once cashed a winning ticket and she admitted later on she cashed several. You can consider that as indicating some inference of consciousness of guilt or treat it as just a statement somebody might make nervously when arrested and trying to protect herself as best she could.

I told you at the beginning and I repeat, you are not to be influenced by the fact there are objections to any questions, some of which I sustained, and some which I did not. You are not trying lawyers. You are trying Mrs. Rogers; the United States of America versus Mrs. Rogers.

Do not guess as to anything I excluded from coming in. While a Federal Judge is permitted to comment on the evidence, he cannot usurp the functions of the jury. Whatever I say does not govern your recollection of what took place. I won't review all the evidence. It has been a fairly short trial and you have heard it all. You have heard it all

summed up quite recently.

There are a few things that seem to me significant. First, Mrs. Friedman struck me as being young and nervous and not altogether accurate in her recollection. That doesn't mean you have to disregard everything she says. We have a lot of O.T.B. witnesses who are in a somewhat embarrassing situation. She had written down there was a driver's license and had not taken down the information about the driver's license as she should have.

It may be that she saw something else and checked "driver's license" by mistake. It may be that she took down the wrong Social Security number of the two numbers on the I.D. card. It may be that she took down a Social Security number which was on a different I.D. card that was actually submitted as Mr. Meyerson suggested. That is an inference for you to draw.

Mr. Sullivan, Mr. Rosen, Mr. Udell were all in varying degrees, on the spot, because improper 1099's had gone through their hands at O.T.B. and what they said might involve them in some confession of violation of the rules or even law. You can consider that as bearing on their credibility as

meaning their whole story was false or they hedged a little bit to tell part of the truth and cover themselves as best they could.

However, I think to a considerable extent, the key to the case is in what Mrs. Rogers admitted with respect to the first transaction when she said she used the name AnnetLe Lehman. She said she used it because she wanted to reestablish credit after some unfortunate experience in Pennsylvania. You can judge whether that is a truthful explanation and you can consider whether the wrong address on the identification, as it was recorded on the 1099, was the result of some nervousness when she first came to New York, or whether it was a device to help prevent the IRS catch up with her if they got the 1099 and sent a notice to the address on the 1099.

The requirement of the statute is that she make or use any false writing, knowing the same to contain any false, fictitious, fraudulent statement, or entry.

Mr. Meyerson read you the certificate she signed, and as I said before, you don't entirely excuse yourself from knowledge, by closing your eyes to facts, and you can consider first, whether she

really did sign this without reading anything, or whether if she did sign it without reading it -- she is charged with knowledge of false statements on there -- if they were knowingly false and if she didn't mean she was using Annette Lehman as a matter of convenience and without intending any fraud.

If she did not have an intent to conceal material facts, she cannot be found guilty on the first count.

On the second and third counts, where she used the name Grannum, there is nothing in the statute that says you can, as a favor, sign a false statement for somebody else. It may be a factor that bears on the degree of culpability, it may have something to do with her knowledge, but it is not in and of itself a legal excuse for making or using of false statement, knowing the same to contain a false or fictitious or fraudulent statement or entry.

You may want to pass on the question of knowledge as determined by Mrs. Rogers own testimony and the surrounding evidence in the case, before you go into the question of credibility or lack of credibility, and the O.T.B. witnesses who testified.

I have not described all the evidence and by leaving anything out, I do not mean it is not material,

or that you should not consider and discuss it all.

I have not meant to indicate whether you should bring in a verdict of guilty or not guilty. That is for you to determine on all the facts.

Now, I come to the question of how you reach a verdict.

The facts are your province. When you go into the jury room, your ultimate verdict must be unanimous on each count. You all have to agree.

When you go into the jury room, Mr. Palmieri will be your Foreman. He should see that everyone gets a chance to talk, and that not more than one person talks at a time.

Apart from that, he has no other power, and his vote has no more effect than anyone else's.

He should help you perhaps, to reach a determination as to when you want to take a ballot.

Remember, you are the judges of the facts. You are not partisans or advocates, and in judging the facts impartially, you are making a high contribution to the administration of justice.

You have to bring in a separate verdict on each of the three counts, guilty or not guilty, and as I said, it must be unanimous. You must all

agree either way.

If you want the exhibits, send a note to the Marshal, and if you want the testimony read, you can send a note for that.

Some is transcribed, some not. We will try to get the Court Reporter for what has not been transcribed. When you reach a verdict give a note to the marshal, you will be brought in here and either party may call for the polling of the jury, so we all know it is a unanimous verdict, one way or the other.

In determining guilt or innocence, give no consideration to the matter of punishment, because that is exclusively my responsibility, if there is a verdict of guilty.

You are each entitled to your own opinions, but you should exchange views with each other and listen carefully to each other, and do not hesitate to change an initial opinion if something is brought to your attention that you didn't consider or you are convinced your initial opinion was wrong.

It must be, however, the conscious determination of each juror. Nobody need give in because others disagree with him.

We are now at sort of an anti-climax, because now, outside your presence, counsel have a right to tell me if I said something wrong, or left something out that should have been read. I will send you back to the jury room for a few minutes with respect to that.

It might be well, when in the jury room, for you to consider how late you want to stay tonight in order to try to reach a verdict, or whether you want to adjourn and come back tomorrow morning.

Normally, I do not ask jurors to stay after five thirty or six unless they think it is profitable and convenient. You cannot start deliberating in the morning, unless you are all here. You can start at 9:30 --

JUROR NO. ONE: Most of the women were talking that they have little jobs to do, and they didn't think they would be staying late.

THE COURT: If that is your determination, I will consider it, but you have to stay for me to hear counsel.

Now, if you are not going to deliberate tonight, I am going to have the alternates go back in the jury room with you, but do not talk about the case.

I am doing that because I do not want to be in

the position where I excuse two alternates tonight, and then someone has a catastrophe overnight and can't get here tomorrow and we are one juror short.

(Jury excused at fourthirty P.M.)

THE COURT: Mr. Meyerson, any exceptions?

MR. MEYERSON: I believe Mr. Bobick has some points.

MR. BOBICK: Your Honor, at this time -- and it was only when listening to your charge, that I realized that I must move for the withdrawal of a juror and a declaration of a mistrial.

The Court has no jurisdiction. Counts two and three did not occur in the Eastern District but in the Southern District. 1501 Broadway is Manhattan, in the Southern District of New York.

MR. MEYERSON: No, that is in Elmhurst.

MR. BOBICK: No, it is in Manhattan.

THE COURT: 1501 Broadway --

MR. BOBICK: 42nd Street, Manhattan. That is not the Eastern District but the Southern District in New York, and it has no business being here. If the jury heard evidence on a count not within the jurisdiction of the Court, it cannot come to a determination.

I move for the withdrawal of a juror and a declaration of a mistrial.

MR. MEYERSON: It states the address and it gives notice of venue.

The law is clear in this Circuit, as well as in any other Circuit that venue is waivable as soon as there is notice of it, and there is notice in counts two and three.

MR. BOBICK: 1501 Broadway, New York. That is the Eastern District as well as the Southern District.

At this point, we never waived venue. I didn't realize it until such time as the Court read the indictment, saying "In the Eastern District of New York." The Grand Jury charges the defendant committed the crime in the Eastern District of New York.

THE COURT: I may let the jury decide it and consider the motions at the end.

Any exceptions to the charge, Mr. Meyerson?

MR. MEYERSON: No, your Honor.

THE COURT: Have you any exceptions, Mr. Bobick?

You don't want this defendant to be tried twice?

MR. BOBICK: If I could try this, here in the Eastern District with Annette Lehman, and I can go back and try the second one, I am willing.

THE COURT: If you tried Annette Lehman, Mr. Meyerson could bring the others in as similar acts.

You may be better off this way, they may compromise and acquit on count one and convict on counts two and three, and I will hear argument as to whether or not I should dismiss.

Have you any exceptions to the charge as given?

MR. BOBICK: No, your Honor.

THE COURT: Bring in the jury, please.

MR. MEYERSON: If the jury would stay until five thirty --

THE COURT: I think the women want to go home. I am not going to rush them.

(Jury entered the jury box at 4:33 P.M.)

THE COURT: Mr. Palmieri, have you any different opinion as to whether you want to stay until five thirty?

JUROR NO. ONE: The jury says they want to go home. It is not fair to the defendant if they try to rush things.

THE COURT: I think that is right. I will abide by your decision.

You are at a crucial stage. You heard everything with reference to the case. You cannot deliberate except 12 together. If you go home together, do not talk about the case along the way --

JUROR NO. ONE: We are very good at following that instruction.

THE COURT: Input, output from any jurors at this stage would be wrong. Keep your lips buttoned and if you run into any people you have seen in the counrtroom, do not talk to them. Can you begin at nine-thirty?

JUROR NO. ONE: Yes, I think so.

THE COURT: Then I will decide whether you should have lunch brought in or go out to lunch. Actually, having the lunch brought in saves a great deal of time.

Now, I will ask Mr. Finck and Mrs. Jackson to wait downstairs, until I see if we have 12 jurors tomorrow morning. You should not have any part in the deliberations.

You are excused.

(Jury excused at 4:40 P.M.)

THE COURT: I would suggest, Mr. Bobick, that you be here by ten o'clock tomorrow morning anyway.

There is no telling when questions may come from the jury.

MR. BOBICK: I will be here.

THE COURT: I normally ask for a stipulation from counsel that exhibits received in evidence may be sent to the jury on request, without reconvening everyone.

MR. BOBICK: I would stipulate that for the record.

MR. MEYERSON: Yes.

Fine.

MR. BOBICK: All the exhibits were given to Mr. Meyerson.

THE COURT: Suppose you leave them with Mr. Giokus.

MR. BOBICK: All the defense exhibits, that is what I gave him.

THE COURT: All right.

(Court was adjourned for the day.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

73-CR-906

CONSTANCE RODGERS, :

Defendant. :

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United States Courthouse
Brooklyn, New York

January 31, 1974
10:00 o'clock a.m.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

SHELDON SILVERMAN
ACTING OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, ESQ.
United States Attorney
for the Eastern District of New York

BY: HAL MEYERSON, ESQ.
Assistant United States Attorney

EDWARD BOBICK, ESQ.
Attorney for Defendant

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MR. BOBICK: I would like to withdraw the motion for a mistrial previously made at the end of the Judge's charge. I would like to at this time move for a directed verdict of acquittal on Counts Two and Three. The reasons I'll go into in a moment, and for a mistrial on Count Number One.

If I can go into the reasons for directed verdict for acquittal, your Honor, the Constitution of the United States provides, Article 6, the defendant is entitled to a trial within the district where the crime is committed. I would like to quote the federal procedure by right and quoting Felix Frankfurter who says, "Questions of venue in criminal cases therefore are not real issues of formal legal procedure. They raise deep issues of public policy in the light in which this legislation must be construed."

THE COURT: Have you read the cases?

MR. BOBICK: I have them.

THE COURT: The Circuit Court of Appeals said in Fabricant venue is not questioned until after the Government has completed the case; therefore, it is waived.

MR. BOBICK: I don't know about that citation. I have quoted a general motion for acquittal after all the evidence is in is sufficient to challenge the

failure to prove venue. There are cases holding if the defendant specifies grounds in support of a motion of acquittal and does not mention venue, he has not preserved his objection for appeal. The cases cited are United States against Gross, Court of Appeals Second Circuit, 1960 in which they said -- I have the decision:

"Privileges and venue in a civil case is of such nature that must be asserted at latest before the expiration of the period allotted for entering general appearance and challenging merits, but no similar time limitation on making of objection exists in criminal cases where questions of venue are not merely matters of formal legal procedure, but of constitutional right."

One of the things the Government has the burden of proving in criminal cases of venue-- without proof of such essential parts of the Government's case there can be no conviction. Motion for acquittal made and the conditional exclusion of all evidence properly raises the question of venue in a criminal case. Of course, the entire case, 276 Federal Reporter, second page,816. In addition thereto there's United States versus Brown, Court of Appeals, Seventh Circuit, 1955, 225 Federal 2d 751; United States against Jones, Court of Appeals, Seventh Circuit, 1949,174 Federal 2d 746. And the pages --

THE COURT: I'll reserve decision on the motion. Do you want to say anything on it, Mr. Meyerson?

MR. MEYERSON: Not only was the defendant aware by the indictment, not only specified the address, but it also specified the branch number. Judicial notice can be taken that anyone can find out Branch 64 -- that the branch number at that address, and it says New York City, is in Manhattan.

Furthermore, from the defendant's own lips, she went there and therefore knew about it, did not make any specific objection and took the stand --

THE COURT: It will require some study, if there is a guilty verdict.

MR. BOBICK: The second situation is that Mr. Meyerson at the end of the case attempted to say that 5101 Broadway was in Queens. He said to me it's Flushing.

Then the Court reminded him the testimony was it was on 52nd Street.

I think that the situation in Judge Friendly in the Circuit Court opinion in the Gross case --

THE COURT: On your mistrial motion?

MR. BOBICK: That was the motion to dismiss for a directed verdict of acquittal on Counts Two and Three. My motion for a mistrial is on Count One on the grounds

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that the Court in its charge to the jury and gave them for consideration, Count Two and Three, which, of course, created such a situation that the jury would be unable to give a fair impartial verdict to the defendant.

THE COURT: Motion denied. Bring in the marshal. I'll swear him in. The jurors are all here.

MR. BOBICK: Are you going to hold the motion on mistrial for Count One?

THE COURT: I denied that.

MR. BOBICK: But you reserved the motion to dismiss on Count Two and Three?

THE COURT: Yes.

MR. MEYERSON: Should the motion be granted to dismiss on Count Two and Three, the Government would request a charge that the jury consider it on similar --

THE COURT: I'm not going to decide the motion until after the verdict.

Will you swear the Marshal, please.

(Whereupon, Marshal Samuel Armstrong was sworn by the Clerk of the Court.)

THE COURT: The jury note asks for the 1099's, I.D. form, checks, et cetera.

(Recess taken.)

THE COURT: Bring the jury in.

(Jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen. I see you're on the job early. We had to take a little time to comply with your note because Miss Ginsberg who took the minutes yesterday was busy in another courtroom. She's now here.

You asked to hear Mr. Pullman's testimony. I'll ask her to read it.

MS. GINSBERG: This is the direct testimony of Joseph Pullman under oath.

(Testimony read by Ms. Ginsberg.)

(Continued on next page.)

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THE COURT: Well, ladies and gentlemen of the jury, that's it.

You may go back and Mr. Giokus, have you the menu so they can deliver lunch.

THE CLERK: Yes.

(Jury excused.)

MR. MEYERSON: May I request an instruction that the Fifth Amendment should not be taken?

THE COURT: It has been given to them once. I am not going to repeat instructions unless I am asked to. I might have given it a little more fully -- you do not have to be a criminal in order to take the Fifth Amendment -- but I will let it stand.

(Recess taken.)

(Time noted 11 o'clock a.m..)

THE COURT: I have a note saying the jury has reached a verdict. I will have them come in.

(Jury entered jury box.)

THE COURT: Mr. Palmiere, I have your note saying you reached a verdict. Please tell us the verdict.

JUROR NUMBER 1: We find the defendant guilty on all three counts.

THE COURT: Do you want the jury polled?

MR. BOBICK: No.

At this time I move to vacate and set aside the conviction.

It is clear that the crime alleged was committed in Manhattan and therefore the defendant could not be tried in the Eastern District.

THE COURT: That is the question of venue that no one noticed until the end and it is a question of law that I will decide.

As to the verdict, I think the jury on the evidence, had not much alternative.

You are under no obligation to answer any questions put to you by the attorneys but you may if you wish to.

MR. BOBICK: May we have the jury polled?

THE COURT: Yes.

Mr. Giokus, please poll the jury.

THE CLERK: Juror number 1, you say you find the defendant, Constance Rodgers, guilty on all three counts. Is that your verdict?

JUROR NUMBER 1: Guilty.

THE CLERK: Is that your verdict?

JUROR NUMBER 2: Yes.

THE CLERK: Is that your verdict, juror number 3?

JUROR NUMBER 3: Yes.

THE CLERK: Is that your verdict, juror number 4?

JUROR NUMBER 4: Yes.

THE CLERK: Is that your verdict, juror number 5?

JUROR NUMBER 5: Yes.

THE CLERK: Is that your verdict, juror number 6?

JUROR NUMBER 6: Yes sir.

THE CLERK: Is that your verdict, juror number 7?

JUROR NUMBER 7: Yes.

THE CLERK: Is that your verdict, juror number 8?

JUROR NUMBER 8: Yes.

THE CLERK: Is that your verdict, juror number 9?

JUROR NUMBER 9: Yes.

THE CLERK: Is that your verdict, juror number 10?

JUROR NUMBER 10: Yes.

THE CLERK: Is that your verdict, juror number 11?

JUROR NUMBER 11: Yes.

THE CLERK: Is that your verdict, juror number 12?

JUROR NUMBER 12: Yes.

THE COURT: You probably won't be needed any more after you go downstairs but if you do stay don't talk with any other jurors. I don't know what they will be involved in. I have a jury following you who is going to try a perjury case of having lied to the grand jury about whether or not he bought the tickets he cashed.

I think Mr. Bobick, when he started out, thought he had a defense of entrapment.

I had to decide whether some of the things should come to you; first, whether the identification of Mrs. Rodgers in the lineup, were induced by improper acts of the agents and I decided the lineup testimony could come in and second, whether Mr. Pullman was in fact a government agent and he testified he was first interviewed by the FBI in June so that the idea of his inducing Mrs. Rodgers had to be abandoned during the course of the trial.

I have a whole series of these cases because there are other charges of bribery in connection with the races where there were these big winners. However, we have to keep an open mind.

You are now excused. Please take your cards and report back downstairs.

Now, you understand the extent to which we try to protect defendants' rights.

(Jury discharged at 11:05 am.)

THE COURT: Mr. Bobick, in the light -- let's first mark this note as Court exhibit 3.

THE CLERK: Note marked Court exhibit 3.

(So marked.)

THE COURT: In the light of the time it takes for presentence reports and the fact that the defendant testified and I know a good deal about the background I prefer to sentence fairly promptly and then let the defendant move for a reduction after affirmance, if there is an appeal and if there is an affirmance and I'd like to put this matter down for sentence next Friday.

If you want to send me anything more with respect to reasons for leniency you can submit it by letter and I will hear you with respect to the pending motions.

I will invite Mr. Meyerson to give me any cases he has. My research last night indicated that you have hit a controversial point as to whether a general motion for a verdict of acquittal raises the issue of venue and I will decide that next Friday -- before next Friday, but I do think in any event, that the conviction on the first count is affected by anything that

came in with respect to the other two. They were similar acts bearing on intent and purpose.

MR. BOBICK: I really do not feel the same way.

THE COURT: You are an advocate. You don't have to feel the same way.

MR. BOBICK: I don't think we would be prepared by next Friday. I'd like to get a copy of the minutes and do a little research. I don't think there is any need that the sentence should be rushed for that --

THE COURT: Suppose I put it over until the 22nd?

MR. BOBICK: The 22nd?

THE COURT: Yes.

MR. BOBICK: All right. I would like that.

THE COURT: February 22nd for sentence.

MR. BOBICK: I think the defendant is out on bail in this case; $5,000.

THE COURT: What is the bail?

MR. MEYERSON: I have no objection to that continuing.

THE COURT: I think she was defended vigorously and skillfully and you did all you could with a difficult case.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 73-CR-906

CONSTANCE ROGERS, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

February 22, 1974
11:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD V., ESQ.
United States Attorney
for the Eastern District of New York

BY: HAL MYERSON, ESQ.
Assistant U.S. Attorney

BOBICK, DEUTSCH & SCHLESSER
149 West 72nd St
New York, New York 10023

BY: EDWARD BOBICK, ESQ.
Of Counsel

THE CLERK: Criminal cause for motion and sentence, United States against Constance Rogers.

MR. MYERSON: Good morning, your Honor.

THE COURT: Good morning, Mr. Myerson, Mr. Bobick, Mrs. Rogers.

THE DEFENDANT: Good morning.

MR. BOBICK: Good morning.

THE COURT: Mr. Bobick, I have your motion papers and I have read them and looked at the cases and, as I think you recognize, it will take the Court of Appeals to change the rules which it had made, which said, in the -- their own Jones case, in 162 Fed 2d, that where the question of venue is apparent on the face of the indictment, it is waived by going to trial.

MR. BOBICK: Your Honor, but the situation is in this case, it wasn't apparent, because it said 1501 Broadway, New York City, on the indictment. It didn't say 1501 Manhattan.

THE COURT: That gives you an argument.

MR. BOBICK: May I further say that at the time when I objected, and I said to you that 1501 Broadway is in the Southern District, not the Eastern District, Mr. Myerson said 1501 Broadway is in Long Island City, and your Honor wasn't even aware at that time that it occurred in the Southern District. Until such time as

I raised the argument, true, learned counsel, Mr. Myerson, and the Honorable Court and myself, were completely in error as to the fact where 1501 Broadway was. We heard the testimony --

THE COURT: I never contemplated it was -- I do not think you contemplated it was anywhere but 42nd Street.

MR. BOBICK: I contemplated, your Honor, that it was in the Eastern District and the Court had jurisdiction, and the Court didn't have jurisdiction. I think that the Court recognized that it didn't have jurisdiction.

The situation very simply was that during the entire indictment, the indictment alleged it happened in the City of New York, which encumbers -- encompasses, not only the Eastern District but the Southern District as well.

It could very easily have been in the Eastern District, and I don't think that the fact where it occurred, occurred to either the Court, Mr. Myerson or myself, until the Court started its charge, is when it occurred to me first.

THE COURT: All right. Motion denied. United States against Jones, 162 F 2d, 72, so ordered.

MR. BOBICK: Well, your Honor --

THE COURT: Is there any other reason why sentence should not be imposed?

MR. BOBICK: Your Honor, I haven't seen the Probation report. I understand it is not prepared.

THE COURT: I did not ask for a Probation report. I said I would sentence without a probation report.

MR. BOBICK: Your Honor, I believe that I'm entitled to a Probation report. I think that the sentence should be imposed, based on the Probation report.

THE COURT: I do not think I need a Probation report on this. I think the sentence should be imposed immediately.

MR. BOBICK: Your Honor, I think the situation is such, your Honor, that a defendant is entitled to a Probation report. I think that there was a recent decision by the Circuit Court of Appeals, and by the United States Supreme Court.

THE COURT: Give me the Supreme Court case.

The Court of Appeals said that a pre-sentence report should be required, unless ordered to the contrary, and I order to the contrary.

MR. BOBICK: Your Honor, the Court ordered a pre -- I believe the Court ordered a Probation Report. I believe the Court ordered a Probation Report.

The fact is, your Honor -- I haven't got the

minutes in front of me, but I remember reading that with the conditions -- with the pre-sentence report, and everything else that you said they would be fast enough to have it by --

THE COURT: No.

MR. BOBICK: I don't know. My recollection is vague on the point, because I assumed that a Probation report was ordered, and I know that the defendant was ordered --

THE COURT: No. I would have a Probation report prepared to consider after the determination of the appeal.

MR. BOBICK: I am sorry, your Honor, say that again. You will have a Probation report to consider after the determination of the appeal?

THE COURT: After the determination of the appeal.

MR. BOBICK: All right, fine.

THE COURT: Rule -- Rule 32(c)1 says "The Probation Service of the Court shall make a pre-sentence investigation and report to the Court before the imposition of sentence or the granting of probation, unless the Court otherwise directs."

I "otherwise direct" and it will be included in my -- in my judgment.

MR. BOBICK: Your Honor, but I think --

THE COURT: This case is sufficiently related to

the harness race cases, so that I think we should not have the delay which is inherent in getting a pre-sentence report.

MR. BOBICK: Your Honor, but I think that the situation is -- that it's involved with the harness case, doesn't mean that we throw justice out the window or the rules out the window.

THE COURT: I am abiding by the rules.

MR. BOBICK: Well, your Honor, I think you ordered a probation report. I think the minutes will reveal it.

I think very simply, that if we had the minutes of what the last -- occurred on the last day, you -- you said you wanted a probation report.

THE COURT: Not before sentence.

Proceed.

MR. BOBICK: Well, your Honor, I strenuously object. May the record reveal that?

THE COURT: The record shows it.

MR. BOBICK: Your Honor, at this time, may I also strenuously object and take exception to the Court's ruling on the motion to -- that you reserve --

THE COURT: You have an exception.

MR. BOBICK: --to dismiss the second and third counts.

May I, your Honor, at this time -- I specifically object, and take exception to the Court's ruling, that the Court should have granted the motion dismissing the first count, or declaring a mistrial and a retrial on the first count, on the grounds that the jury was so prejudiced, by the Court, allowing into evidence testimony of another client, which was not -- which the Court did not have jurisdiction of, that the spillover of the second and third indictment, the spillover of prejudice --

THE COURT: You know, under the Deaton case, that it would have been admissible whether or not --

MR. BOBICK: But, your Honor, I would never have to be in a position of saying to the jury, "We were unable to prove the entrapment" and I had to tell that to the jury before they went out to consider.

I had to say to the jury that I was mistaken, and I think that you told them that in their charge, that Mr. BOBICK was mistaken when he asked -- spoke about entrapment.

And I would not have to mention entrapment if you had dismissed the case. The jury wouldn't have had to consider entrapment or anything else, and the point is that at the end of the entire case, the duty

of the Court was to dismiss counts two and three because of the fact that there was no jurisdiction, that the Court in its determination or -- and I am not -- its legal determination, but its mental determination to proceed with this case, no matter what happens, failed to dismiss counts two and three, and it should have been dismissed.

As a matter of law, it should have been dismissed. As a matter of right, it should have been dismissed.

THE COURT: I am proceeding to sentence. Why should there not be a substantial prison sentence?

MR. BOBICK: Because this defendant hasn't received due justice in this Court.

THE COURT: Mrs. Rogers, do you want --

MR. BOBICK: I am not finished, your Honor, if the Court pleases.

I was going to say the Court has a complete Probation report in front of it, but it doesn't have a complete Probation report. The situation involved in this case, your Honor, concerns a violation of 1001.

There is no question about it, that there is a question for the jury by itself to consider on the first count, whether or not the exhibit which is, in

evidence, the exhibit of the ID card, constitutes sufficient compliance with Section -- with the Section that's involved.

Second of all, your Honor, may I say that the --

THE COURT: Those are arguments on appeal.

My question is, why a deliberate attempt to deceive the Internal Revenue Service with respect to substantial gambling gains, should not result in a substantial prison sentence?

(Continued on next page).

MR. BOBICK: For the very simple reason that there was no deliberate attempt. If the Internal Revenue Bureau would have received the correct Social Security number, the Internal Revenue Bureau would not have been defrauded, regardless of what name is concerned.

Exhibit C, that was submitted in Evidence by the defendant, indicates the correct Social Security number. And that --

THE COURT: The jury did not have to decide that that was the document she submitted from which a clerk copied a wrong Social Security number.

MR. BOBICK: Your Honor, may I --

THE COURT: It may very well have been, as was suggested, a contrived exhibit.

MR. BOBICK: Your Honor, may I also say, your Honor, that there was nothing in this case that would have gone in on the second and third counts or no statements would have been made if the second and third counts had been dismissed.

THE COURT: All right. That's argument for the Court of Appeals.

MR. BOBICK: Right.

Now, your Honor, let us go a step further. The situation is that this defendant is charged with making a false statement. She denies on the Count One that she

made a false statement. She denies that she submitted to the jurisdiction of the Internal Revenue Department anything that was false.

And I call your Honor's attention to the forms used by the OTB, in getting the signature of this defendant.

The Internal Revenue Bureau did not receive this defendant's signature or anything else.

The only penalty --

THE COURT: I charged the jury, signature was not necessary. Maybe I am wrong.

Again you are arguing for the Court of Appeals.

MR. BOBICK: I want to get it down.

THE COURT: All right.

MR. BOBICK: And then the penalty that was imposed or listed above the warning on which the defendant signed her name was not one thousand and one, and there was no warning given to this defendant that she was violating the United States Code, Subdivision -- Section 1001.

There was nothing in the warning given to her notifying her of that fact. There was nothing in the warning violating -- notifying her she was violating a Federal statute.

THE COURT: That does bear on sentence.

3 MR. BOBICK: Right?

THE COURT: Yes.

MR. BOBICK: All right.

Now, at this point, your Honor, the defendant stands before you. She objects to be sentenced at this point.

I think I've said everything about it I can say on that and, therefore, we would object to any sentence imposed.

THE COURT: All right. Mrs. Rogers, do you want to say anything on your own behalf?

THE DEFENDANT: I think he said it all.

THE COURT: Mr. Meyerson, is there any comment?

MR. MEYERSON: No, your Honor.

THE COURT: I will impose a sentence of a year and a day on Count One, two years concurrent on Counts Two and Three, and a fine of --

MR. BOBICK: Wait a minute.

THE COURT: (Continuing) -- $5,000 on Count One.

MR. BOBICK: Your Honor, I am sorry. I didn't get the sentence. One year and a day on Count One?

THE COURT: A year and a day on Count One and a fine of $5,000.

MR. BOBICK: And Count Two?

THE COURT: And Counts Two and Three, two years

4 concurrent with each other and with Count One.

MR. BOBICK: Your Honor, you told me -- and I think you told the defendant -- and I think you said that, "I don't give consecutive sentences."

THE COURT: I am not giving consecutive sentences.

MR. BOBICK: But you're giving more on the second count than you gave on the first.

THE COURT: Yes. On the first count she used her maiden name, which may have some justification. The second and third were more deliberate, and that gives you a chance to raise your venue count on the second -- venue point on the second and third counts, which might not otherwise be material.

MR. BOBICK: Fine. Thank you very much.

THE COURT: Now, Mrs. Rogers, you have a right to appeal, and Mr. Bobick has a duty to file a notice of appeal within ten days, if you request, and he has an obligation to represent you in the Court of Appeals, until and unless he's relieved.

MR. BOBICK: Your Honor, I've prepared a notice of appeal.

THE COURT: Fine.

MR. BOBICK: Which I will submit and file today.

I ask that the defendant be continued on bail pending appeal.

THE COURT: What is the bail, Mr. Meyerson? If this was a perjury case, I would remand. But --

MR. MEYERSON: The bail was $5,000 surety bond.

THE COURT: Is that adequate?

MR. MEYERSON: I imagine so, your Honor.

The defendant -- the defendant is also a defendant in a Superfecta. Perhaps it would be better to raise it, your Honor.

THE COURT: What is the bail in the Superfecta?

MR.BOBICK: Your Honor, the same $5,000.

MR. MEYERSON: It's the same five.

THE COURT: I think bail should be $20,000.

MR. BOBICK: Your Honor, how about a 5,000 surety bond and a personal recognizance bond?

THE COURT: No.

MR. BOBICK: Your Honor, the --

THE COURT: There may be too much incentive.

MR. BOBICK: Your Honor, there is a $25,000 bond. It's 5,000 plus 25,000 personal surety. That's already been imposed now.

THE COURT: All right. This will be $20,000 surety bond.

MR. BOBICK: Your Honor, she's appeared each and every time. Her roots are in the community. She's always appeared. She's never even been late, and the

point of the fact is that you yourself recognize the fact that this is going up on appeal, that there are grounds for appeal.

The fact is, you perfected the right to appeal because of this situation, and I'm sure you wouldn't have protected that right if you felt there wasn't a legal question that had to be decided.

THE COURT: There may be incentive for other people to have her disappear.

MR. BOBICK: Your Honor, there -- before we go into that, would the Court reserve that or hold back on that their application on bail? There was a motion made. The Court asked the district -- United States Attorney to come in with the motion to sever this defendant from the main case.

Now, the Court said I expect on the 22nd that there will be a motion made to sever her from that Superfecta case.

THE COURT: I am going to sever her of my own motion, if the Government does not move it.

MR. BOBICK: Your Honor, at this point, if -- at this point she is severed from the Superfecta case, there are no more grounds for her to do anything.

At this point, at this point the bail should be sufficient.

It's only on this charge and her legal right to appeal, which the Court recognizes as a ground itself, is not a frivolous matter.

To raise her bail at this point, she can't get out. You sentenced her. Youre sentencing her at this point because when you said bail, while it's true you are raising the bail, Mr. Meyerson came along now and said maybe it should be raised, but you, your Honor, implanted the idea, planted the seed and grew the tree and watered the plant.

The situation is that she always showed up. She is not disappearing. She's on a $5,000 surety bond and a 25,000 personal recognizance.

The girl is here. She has her mother. The mother -- address is known to the Probation Department. She has a child, the address is known. She's always been in touch.

THE COURT: $20,000 bail. You may apply on written papers for reduction next week, if she is unable to make it.

MR. BOBICK: Your Honor, she severed as to the other case?

THE COURT: I will do that when we get to Vario. It will be severed.

Otherwise, you plead an impossible situation,

representing her and Mr. Gerry.

MR. BOBICK: Your Honor, now we come to another problem then. Is the bail that she is on now cancelled? Does she need a $10,000 -- does she need $20,000 new bail?

THE COURT: I do not know. That is up to the surety.

(Continued on next page.)

MR. BOBICK: But you are the one that's setting the rules. You are the one that's telling us what we have to do.

THE COURT: The bail must be twenty thousand dollars.

MR. BOBICK: Is it fifteen thousand?

THE COURT: It is a fifteen thousand dollar increase. It is not twenty five it is twenty.

MR. BOBICK: All right. And the five thousand that was covering the other case, the other case, the -- well, no. So this is five thousand. It's increased five thousand more?

THE COURT: That is right.

MR. BOBICK: Your Honor, will the Court entertain an application to increase it to ten thousand? Give us a break, but to do it -- to lift it up at this point --

THE COURT: How about it, Mr. Myerson?

MR. MYERSON: I think twenty thousand dollars is -- would be the right bail.

THE COURT: I will leave it at twenty thousand, subject to a motion to reduce next week.

THE MARSHAL: Your Honor, I must remand the defendant until counsel raises bail.

MR. BOBICK: Your Honor, may we have two minutes, please?

THE COURT: All right.

MR. BOBICK: Your Honor, can we have until four o'clock to get bail?

THE COURT: Yes.

MR. BOBICK: What?

THE COURT: Yes, until four o'clock.

MR. BOBICK: Continuance until four o'clock?

THE COURT: Until four o'clock.

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